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A DIGEST
OF THE LAW OF
BILLS OF EXCHANGE,
PROMISSORY NOTES AND CHEQUES.

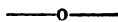
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INTRODUCTION.



As far as form goes the present Digest is modelled on the Indian Codes, the main idea of which is as follows. A general proposition is first laid down. Qualifications or less obvious deductions, when of sufficient importance, are next stated in the form of Explanations. Then come the Exceptions, if any. These abstract propositions are illustrated, when necessary, by examples shewing their application to particular states of fact. Each general proposition, with its accompanying "explanations" and "exceptions," forms a separate article. The same plan has been adopted by Sir James Stephen, in his Digests of the Law of Evidence and of the Criminal Law, and by Mr. F. Pollock, in his Digest of the Law of Partnership. As regards the subject of codification generally, and its prospects in this country, I have little or nothing to say. Any reader interested in the matter, will find it fully discussed by the above mentioned authors in the Introductions to the works referred to. Sir James Stephen most certainly cannot be open to the charge of being a mere theorist. He has codified for India, with admirable success, both the Law of

Contract and the Law of Evidence, and has shewn that in competent hands like his, codification is not an unpractical dream, but a working and highly beneficial reality. These writers have also pointed out that Digests in the present form may be to some extent helpful in preparing the way for codification at home. In the meantime, I hope the form adopted may be found convenient for a text-book. As regards details of plan I must offer a few words of explanation.

For the most part, provisions applicable to Bills of Exchange are equally applicable to Promissory Notes and Cheques; therefore the term "Bill" is used in the articles of this Digest as meaning and including Promissory Note and Cheque, as well as Bill of Exchange. When a provision does not apply equally to Notes and Cheques the full expression "Bill of Exchange" is used, and the distinction is pointed out in a note. The provisions peculiar to Promissory Notes and Cheques are collected in two chapters at the end of the book. This plan has been adopted, first, in order to economise space, and secondly in order to give a clearer and more consecutive account of a Bill of Exchange, which is the typical and most important negotiable instrument. As to the second reason, I would refer to the remarks of Mr. Justice Story, in the preface to his work on Bills of Exchange. Subject to the explanation given above, I hope this extensive meaning given to the word "Bill" is justified, and will not lead to confusion. There is to some extent authority for the course pursued. In the Stamp Act, 1870, "Bill of Exchange" is defined so as to include Cheque, and in the reported cases on cheques the instrument is frequently termed a "Bill," as indeed for most purposes it is. In the older cases on promissory notes the instrument is called indifferently a Bill or Note.

To save space letters are substituted for names in the Illustrations, and to facilitate reference and comparison the same letter is always used to denote the same party to a

Bill or Note. Thus A. is always used for the drawer of a bill ; B. for the drawee or acceptor of a bill or the maker of a note ; C. for the payee and first indorser of a bill or note. When a case is quoted, the date is given. This avoids the necessity of referring to more than one report ; and where cases are in conflict, it enables the reader to see at a glance which is the most recent and therefore the most authoritative. Where a case directly decides the point it is quoted to establish, the name is given simply ; but when it only decides the point by implication or is relied on as an analogy, or when it merely contains an obiter dictum on the subject, the name is preceded by the mark *cf.* (compare).

Anything like a detailed discussion of doubtful cases, or a history of past controversy on points which may now be considered as settled, would be foreign to the purpose of a work like this ; but I have added to the ordinary Index of Cases, a list of the more important cases which have been overruled, doubted or explained *nominatim*, see p. xxvii. The list has no pretension to completeness, but perhaps it may be useful as far as it goes. Several of the articles go beyond the logical limits of a digest of a special subject, inasmuch as they state propositions which apply not only to bills, but to all simple contracts alike. In some few cases of frequent occurrence, this is done in the hope that the book may thus be more useful to men of business, who have not other books of reference at hand. In the majority of cases it is done because doubts have arisen as to whether bills were or were not governed by the ordinary rules. In a Code all such articles would be superseded by a single proposition to the effect that when the contrary is not expressed the ordinary rules of law applicable to simple contracts apply to bills. In an un-authoritative Digest, such a proposition seems merely nugatory.

It is almost needless to point out, that the similarity

between the Indian Codes and a Digest like the present is merely resemblance in form. There all analogy ends. In a Code the subject in hand is treated completely and finally. A Code states methodically the law as the legislature is of opinion that it ought to be. This Digest is an attempt to state methodically the law as it is. In a Code, propositions and illustrations are alike authoritative. In this Digest, the illustrations taken from decided cases are alone authoritative. The general propositions are only entitled to weight in so far as they are complete and legitimate inductions from decided cases which are unquestioned law. A general proposition, supported by reference to cases, merely amounts to a verifiable hypothesis as to what the law is. In the theory of English law, there exists *in nubibus* a complete set of principles applicable to every conceivable state of facts that can arise. Theoretically the judges do not make law. They only interpret it. They are merely the conductors by which the principle is brought down from the clouds and made available to men. Practically, however, their functions are frequently and of necessity legislative. If a wide subject be investigated systematically, four states of the law will be found to exist. First, the law on a given point may be reasonably certain. All authority, or the great weight of authority, may be in favour of a given proposition. Secondly, a proposition on a given point can only be stated as probably holding good. For instance, it may rest merely on unchallenged obiter dicta, or there may be a decision in favour of it, and weighty obiter dicta opposed to it. Thirdly, the law on a given point may be uncertain. Decisions may be in direct conflict, or again there may be a decision in point which has never been directly questioned, but the *ratio decidendi* of which seems entirely opposed to the principle of later cases. Fourthly, there may be an entire absence of authority on a given question. Such being the state of the materials available for

forming a Digest, it is clear that if the subject is to be treated methodically, many propositions can only be stated tentatively. Many of the articles, therefore, are qualified with a (probably) or a (perhaps), and the reason of the qualification is then stated in a note.

On doubtful points frequent reference is made to American cases and Continental Codes and writers. In mercantile matters, when the law is uncertain or authority wanting, there is an increasing tendency to refer to Foreign Codes and laws in order to see how other nations have solved the difficulty. This is especially the case as regards negotiable instruments, the most cosmopolitan of all contracts. Mr. Justice Story, in his judgment in *Swift v. Tyson* (16 Peters, 1), gives forcible expression to the principle. He says, "The law respecting negotiable instruments may be truly declared, in the language of Cicero, adopted by Lord Mansfield in *Luke v. Lyde* (2 Burr. 887), to be in a great measure, not the law of a single country only, but of the commercial world. Non erit lex alia Romæ, alia Athenis, alia nunc alia post hac, sed et apud omnes gentes et omni tempore una eademque lex obtinebit."

An American decision, it is needless to say, is not a binding authority in this country, but, if well reasoned, it is always considered with respect by our Courts. Many of the American judgments are very valuable as expounding and testing the principles of English decisions. An English case there, like an American case here, is only an authority in so far as it appears to be a correct deduction from the general principles of common law and the law merchant which prevail in both countries alike.

When the subject matter of an article of this Digest is dealt with by the French 'Code de Commerce,' or the 'German General Exchange Law, 1849,' their respective provisions are compared. If they agree, a mere reference to the corresponding sections is given. If they differ, the points of

difference are given in a note. A vast number of the bills circulated in England are foreign bills. It seems useful, therefore, to indicate the main points of divergence which may give rise to a conflict of laws. The French Code is important, as it forms the basis of most of the continental Codes: Belgium and Italy, for instance, have adopted it almost in its entirety. French law is worthy of attention in another respect. In the absence of English authority, our Courts have, in some instances, consciously taken it as their guide. (See per Parke, B., in *Foster v. Dawber*, 6 Exch. 852.) The 'Code de Commerce,' to a great extent, embodies and enacts the opinions of Pothier, whose authority, says Best, C. J. (in *Cox v. Troy*, 5 B. & Ald. 481), "is as high as can be had next to the decision of a Court of Justice in this country." On doubtful points not dealt with by the Code, reference is occasionally made to Pothier, and also to the exhaustive treatise of M. Nougier (*Des Lettres de Change and Des Effets de Commerce*, 4th ed., 1875), which gives the latest results of French law.

The German General Exchange Law of 1849 (slightly modified 1869), is important in two respects. First, it is the most elaborate and carefully worked out of the foreign Codes. Secondly, it is an international and not merely a national Code. All the German states, including Austria, have adopted it, and the terms of its adoption are these. Each state is at liberty to supplement it by additional laws of its own, but such laws are not in any way to contradict or override it. M. Nougier, in the work above referred to, gives in French the text of the Exchange Law, and also the various supplementary laws passed by the different states.

It would probably be very advantageous to the commercial world if this principle of an International Code could be further extended. The difficulties of carrying it out do not seem insuperable, though, doubtless, they would be great. The pro-

visions of such a Code would have to be settled by agreement, and then each state would enact it for its own territory. In the case of England, it would probably be necessary to confine its operation to foreign bills, that is to say, to bills drawn or payable abroad. Our law, as regards foreign bills, does not widely diverge from the law of other commercial countries, and it diverges chiefly by allowing greater latitude than is adopted in practice.

Occasional reference is made to the Indian Draft Code. For some reason I am not aware of it has never been enacted. It is to be found in the 3rd Report of the Indian Law Commissioners (1867). The Commission was a strong one, as it included Lord Justice James, Mr. Justice Lush, and Mr. Lowe. The draft code is preceded by a report which points out where the provisions of English Law have been departed from. The document, therefore, is valuable as showing what, in the opinion of the Commissioners, the English law is, and also where it ought to be changed. In a work like the present, it is thought it would be waste of space to carry references to foreign laws or authorities any further, but it may be worth while to mention where they can be found.

Borchardt (*Vollständige Sammlung der geltenden Wechsel- und Handels Gesetze aller Länder*, 1871), collects the statutory enactments of all countries relating to Bills of Exchange. Part I. gives a German translation, Part II. the original text. More than forty countries have codified their law on this subject; in fact, England and the United States seem to be the only civilised nations which have not done so. Since Borchardt's work was published the Egyptian Commercial Code has, I believe, been re-cast. I do not know how far the provisions relating to bills have been altered. M. Nouguiet in a supplementary Chapter to his work on Bills (*Des Lettres de Change*, 1875), compares the laws of the chief commercial nations with the French Code. M. Massé's "*Droit Commercial*

et des Gens" is a valuable work on the conflict of laws—especially as regards Bills. The latest American book, I believe, is Daniell on Negotiable Instruments, 1877. Story on Bills of Exchange, and Parsons on Notes and Bills, are also standard American works. Thomson on Bills of Exchange, is the standard book on Scotch law which, it must be remembered, differs materially from the English.

The origin and history of Bills of Exchange and other negotiable instruments are traced by the present Lord Chief Justice in his judgment in *Goodwin v. Robarts* (1875), 10 L. R. Ex., pp. 346—358. It seems that Bills were first brought into use by the Florentines in the twelfth century. From Italy the use of them spread to France, and eventually they were introduced into England. The first English reported case in which they are mentioned is *Martin v. Boure* (Cro. Jac. 6), decided in 1603. "At first the use of Bills of Exchange seems to have been confined to foreign bills between English and foreign merchants. It was afterwards extended to domestic bills between traders, and finally to bills of all persons whether traders or not." The law throughout has been based on the custom of merchants respecting them; the old form of declaration on bill used always to state that it was drawn "secundum usum et consuetudinem mercatorum." In the time of Chief Justice Holt, a controversy arose between the courts and the merchants, as to whether the customary incidents of negotiability were to be recognised in the case of promissory notes. The dispute was settled by the stat. 3 & 4 Anne, c. 9, which vindicated the custom and confirmed the negotiability of notes (p. 349). Again, in 1873 the Court of Queen's Bench were of opinion that documents other than bills and notes could not be endowed by custom with the incidents of negotiability. But the efficacy of custom was again upheld by the Exchequer Chamber in 1875, in *Goodwin v. Robarts*, where it was determined that foreign scrip might be rendered

negotiable by custom, so as to pass with a good title, and free from all equities to a *bonâ fide* purchaser. The Court then say (p. 356), "While we quite agree that the greater or less time during which a custom has existed may be material in determining how far it has generally prevailed, we cannot think that if a usage is once shown to be universal it is the less entitled to prevail, because it may not have formed part of the law merchant as previously recognised and adopted by the Courts." The House of Lords approved the decision in 1876.

The results of this formation of the law by custom are instructive. A reference to Marius' treatise on Bills of Exchange, written about 1670, or Beawes' *Lex Mercatoria*, written about 1720, will show that the law, or perhaps rather the practice, as to Bills of Exchange, was even then pretty well defined. Comparing the usage of that time with the law as it now stands, it will be seen that it has been modified in some important respects. Comparing English law with French, it will be seen that, for the most part, where they differ, French law is in strict accordance with the rules laid down by Beawes. The fact is, that when Beawes wrote, the law or practice of both nations on this subject was uniform. The French law, however, was embodied in a Code by the '*Ordonnance de 1673*,' which is amplified but substantially adopted by the *Code de Commerce* of 1818. Its development was thus arrested, and it remains in substance what it was 200 years ago. English law has been developed piecemeal by judicial decision founded on custom. The result has been to work out a theory of bills widely different from the original. The English theory may be called the Banking or Currency theory, as opposed to the French or Mercantile theory. A Bill of Exchange in its origin was an instrument by which a trade debt, due in one place, was transferred in another. It merely avoided the necessity of transmitting cash from place

to place. This theory the French law steadily keeps in view. In England bills have developed into a perfectly flexible paper currency. In France a bill represents a trade transaction; in England it is merely an instrument of credit. English law gives full play to the system of accommodation paper; French law endeavours to stamp it out. A comparison of some of the main points of divergence between English and French law will show how the two theories are worked out. In England it is no longer necessary to express on a bill that value has been given, for the law raises a presumption to that effect. In France the nature of the value must be expressed, and a false statement of value avoids the bill in the hands of all parties with notice. In England a bill may now be drawn and payable in the same place (formerly, it was otherwise, see the definition of bill in Comyn's Digest). In France the place where a bill is drawn must be so far distant from the place where it is payable, that there may be a possible rate of exchange between the two. A false statement of places, so as to evade this rule, avoids the bill in the hands of a holder with notice. As French lawyers put it, a Bill of Exchange necessarily presupposes a contract of exchange. In England (since 1765) a bill may be drawn payable to bearer. In France it must be payable to order; if it were not so, it is clear that the rule requiring the consideration to be expressed would be an absurdity. In England a bill originally payable to order becomes payable to bearer when indorsed in blank. In France an indorsement in blank merely operates as a procuration. An indorsement, to operate as a negotiation, must be an indorsement to order, and must state the consideration; in short, it must conform to the conditions of an original draft. In England if a bill be refused acceptance, a right of action at once accrues to the holder. This is a logical consequence of the currency theory. In France no cause of action arises unless the bill is again

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dishonoured at maturity; the holder in the meantime is only entitled to demand security from the drawer and indorsers. In England a sharp distinction is drawn between current and overdue bills. In France no such distinction is drawn. In England no protest is required in the case of an inland bill, notice of dishonour alone being sufficient. In France every dishonoured bill must be protested. Grave doubts may exist as to whether the English or the French system is the soundest and most beneficial to the mercantile community, but this is a problem which it is beyond the province of a lawyer to attempt to solve.

M. D. C.

November, 1878.

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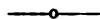
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LIST OF ABBREVIATIONS.



Byles—Byles on Bills of Exchange. 12th edition. 1876.

Chitty—Chitty on Bills of Exchange. 11th edition. 1878.

Daniel—Daniel on Negotiable Instruments. New York. 1876.

French Code—French Code de Commerce of 1818.

German Exchange Law—German General Exchange Law of 1849.

Nouguier—Nouguier's "Lettres de Change et Effets de Commerce."
Paris. 4th edition. 1875.

Pothier—Pothier, Traité du Contrat de Change. Paris. 1847.

Story—Story's Commentary on the Law of Bills of Exchange.
4th edition. 1860.

ERRATUM.

Page 36, line 6, for "*fædora*," read "*fædera*."

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A DIGEST

OF THE LAW OF

BILLS OF EXCHANGE.

CHAPTER I.

FORM AND INTERPRETATION OF BILLS.

[EXPLANATORY HEAD NOTE.—The term “Bill,” as used in the articles of this Digest, includes, *mutatis mutandis*, Promissory Note and Cheque as well as Bill of Exchange. When a provision does not apply equally to Notes and Cheques, the full expression “Bill of Exchange” is used. See Introd., p. iv., and head note to Chaps. IX. and X.]

Art. 1. A Bill of Exchange is an unconditional ^{Bill of} order in writing for the payment of a sum of money, ^{Exchange} defined. absolutely and at all events.

NOTE.—A Bill of Exchange is frequently called a “Draft.” By English law no particular form of words is requisite to its validity (Art. 10), and it need not necessarily be negotiable (Art. 8); therefore negotiability, its chief characteristic, does not enter into the definition. By German Exchange Law, Art. 4, a bill must expressly mention that it is a Bill of Exchange. Subjoined are two common forms :

FORM 1.—INLAND BILL.

No. 10. £100 0 0

London, 1st January, 1870.

Three months after date pay to our order the sum of one hundred pounds.

Value received.

ANDREWS & Co.

To Messrs. Brown & Sons, London.

B

Bill of
Exchange
defined.

FORM 2.—FOREIGN BILL.

No. 10. Exchange for £100.

Calcutta, 1st January, 1870.

Six months after sight of this First of Exchange (Second and Third unpaid), pay to the order of Mr. John Charles, one hundred pounds.

Value received, and charge the same to account of Messrs. Smith & Co., against your letter of credit, No. 1.

JAMES ANDREWS.

To Mr. J. Brown, London.

Parties.

Necessary
parties.

Art. 2. There must, in point of form, be three parties to a Bill of Exchange in its origin, and two at least of these must be different persons. They are—

- (1.) The party who gives the order, called the drawer.
- (2.) The party on whom the order is given, called the drawee. If the drawee duly signify his assent thereto, he is called the acceptor, and becomes the principal debtor on the bill.
- (3.) The party in whose favour the order is given, called the payee.

Explanation 1.—The drawer and payee may be the same person, *i.e.* a bill may be drawn payable to the drawer, or his order.¹

Explanation 2.—A bill may be payable to the order of the drawee, if he act in two different capacities.²

ILLUSTRATION.

B. is in business on his own account. He is also agent for X. A bill is drawn on B. as agent for X., payable to his order on his own account. He accepts and indorses it. This is a valid bill.

¹ *Buller v. Cripps* (1704), 1 Salk. 130, *German Exchange Law*, Art. 6.

² *Holdsworth v. Hunter* (1830), 10 B. & C. 449; *Pardessus*, § 339.

NOTE.—It is clear that the instrument is not a bill, which can Necessary be enforced until it is indorsed away : Cf. *R. v. Bartlett* (1841), 2 parties. M. & R. 362.

Explanation 3.—If the drawer and drawee be the same person, or if the drawee be a fictitious person, the holder may treat the instrument, at his option, either as a Bill of Exchange or as a Note.¹

ILLUSTRATIONS.

1. A. & Co. carry on business in London and Liverpool. The London house draw a bill on the Liverpool house. The holder may treat it as a note made by the London house payable in Liverpool ; and if it be not paid, the omission to give notice of dishonour to the London house is immaterial.²

2. A. draws a bill on B. and negotiates it to C. ; B. is a fictitious person. C. may treat the bill as a note made by A. He need not prove presentment or give notice of dishonour.³

3. The directors of a joint stock company draw a bill in the name of the company, addressed “To the Cashier.” The holder may treat it as a note by the company.⁴

NOTE.—Cf. Art. 139. Fictitious payee or indorser. As to notes, see Arts. 272 and 274.

Art. 3. “Holder” means the person in possession ^{Holder.} of a bill, who by the Law Merchant is entitled to enforce the payment thereof. It includes equally payee, indorsee, or bearer.

NOTE.—Cf. Art. 125. Holder and *de facto* holder distinguished.

Art. 4. A Bill of Exchange must be signed by ^{Signature} the drawer.⁵ _{of drawer.}

Explanation.—The drawer’s signature may be added at any time, but until it is there the instrument is inchoate and without effect (Art. 23).

¹ *Miller v. Thomson* (1841), 3 M. & Gr. 576 ; *Fairchild v. Ogdensburgh Railway Co.* (1857), 15 N. Y. 337 ; Cf. German Exchange Law, Art. 6.

² *Id.* Cf. *Willans v. Ayers* (1877) 3 L. R. Ap. Ca. 133, P. C.

³ *Smith v. Bellamy* (1817), 2 Stark. 223.

⁴ *Allen v. Sea, Fire and Life Assurance Co.* (1850), 9 C. B. 574.

⁵ Cf. *Ex parte Hayward* (1871), 6 L. R. Ch. 546 ; German Exchange Law, Art. 4 ; *Nouguier*, § 87, 88.

Signature
of drawer.

ILLUSTRATION.

A. draws a bill on B., payable to drawer's order, but does not sign it. B. accepts, and it is transferred for value to C. The instrument is neither a bill nor a note.¹

NOTE.—If a bill payable to drawer's order were indorsed by the drawer, though not signed by him on the face, this would probably be sufficient. It is so in France : *Nouguier*, § 199 ; Cf. Art. 32.

Designa-
tion of
drawee.

Art. 5. The drawee must be designated in a Bill of Exchange with reasonable certainty.²

ILLUSTRATIONS.

1. Instrument in the form of a bill, but addressed to no one. B. writes an acceptance thereon. This is not a bill, and B. is not liable as acceptor.³ He is, it seems, the maker of a note.

2. Instrument in the form of a bill payable to drawer's order, not containing the name of a drawee, but expressed to be payable "at No. 1, X. Street, London." B., who lives there, accepts it. This is a bill, and B. is liable as acceptor.⁴

3. Instrument in the form of a bill. Where the address to the drawee should be, are the words "at Messrs. B. & Co." This is a bill addressed to B. & Co.⁵

NOTE.—The question in Illustr. 2 has arisen also in Scotland and France, and has been decided in the same way : *Thompson*, p. 46 ; *Nouguier*, § 131. A cheque in this form would probably be invalid, for the uncertainty could not be cured by acceptance : Cf. Art. 2 as to a Fictitious Drawee.

Several
drawees.

Art. 6.—A Bill of Exchange may be addressed to two or more drawees, jointly, whether partners or not.⁶

NOTE.—Can there be an alternative drawee? In *Anon.* (1701), 12 Mod. 446, a bill addressed to "B., or in his absence to X.," was accepted by B., and was held good. But, as far as appears, X. may have been an ordinary Case of need. An alternative drawee seems to make the payor uncertain : Cf. *Ferri v. Bond* (1821), 4 B. & Ald. 679, as to construction of a note signed in alternative.

¹ *McCall v. Taylor* (1855), 34 L. J. C. P. 365 ; Cf. *Goldsmid v. Hampton* (1858), 5 C. B. N. S. 94.

² Cf. *Peto v. Reynolds* (1854), 9 Exch. 410 ; 11 Exch. 413, Ex. Ch. ; French Code, Art. 110 ; German Exchange Law, Art. 4.

³ Id. Cf. also, Arts. 37 and 58.

⁴ *Gray v. Milner* (1818), 8 Taunt. 739.

⁵ *Shuttleworth v. Stephens* (1808), 1 Camp. 407.

⁶ Cf. *Harmer v. Steele* (1849), 4 Exch. at 13, Ex. Ch.

Art. 7. A Bill of Exchange may designate one ^{Case of need.} or more persons in addition to the drawee to be resorted to for acceptance or payment in case of need, *i.e.*, in the event of the bill being dishonoured by the drawee.¹

NOTE.—Such person is called the drawee or referee in case of need, or simply the Case of need. According to French law the Case of need (*besoin* or *recommandataire*) must reside where the bill is payable (*Nouguier*, § 244; and cf. German Exchange Law, Art. 56); but this is not the case in England: see the language of 6 & 7 Will. 4, c. 58. A bill on Liverpool often names a Case of need in London: Cf. Art. 122. Indorser may name Case of need. Art. 184. Presentment to Case of need.

Art. 8. A bill may be expressed to be payable ^{To whom payable.} to a person therein designated, or to his order, or to bearer.²

ILLUSTRATIONS.

1. Pay C.—Pay the trustees of the X. Chapel.
2. Pay C. or order—Pay to the order of C.
3. Pay to bearer.—Pay to ship "Fortune," or bearer.³
- Pay ——— or bearer.⁴

Explanation 1.—A bill drawn payable to a particular person simply, without the addition of the words "or order," "or bearer," or their equivalents, is valid *inter partes*, but not negotiable.⁵

NOTE.—By French Code, Art. 110, a bill must be payable to order. A bill payable to bearer or to a particular person simply would be invalid. By German Exchange Law, Art. 4, the payee must be named. In Scotland, a bill is negotiable, unless words prohibiting negotiation are used, *e.g.*, "Pay C. only:" *Robertson v. Burdekin* (1843), 1 Ross L. C. 824. German Exchange Law, Art. 9, is to the same effect.

¹ Cf. *Re Leeds Banking Co.* (1865), 1 L. R. Eq. 1, and 6 & 7 Will. 4, c. 68; French Code, Art. 173; German Exchange Law, Art. 62.

² Cf. *Storm v. Stirling* (1854), 2 E. & B. at 842.

³ *Grant v. Vaughan* (1764), 3 Burr. 1516.

⁴ Cf. *Haussoullier v. Hartsinck* (1798), 7 T. R. 733.

⁵ *Plimley v. Westley* (1835) 2 Bing. N. C. at 251; Cf. Art. 107.

To whom
payable.

Explanation 2.—A bill drawn payable to the order of a particular person is payable to him or his order.¹

ILLUSTRATION.

Bill drawn thus, "Pay to the order of C.," C. can enforce payment to himself without indorsing it.²

Payee
must be
person *in
esse*.

Art. 9. The payee of a bill, not payable to bearer, must be an existing person capable of being ascertained and identified at the time it is issued.³

Explanation 1.—Extrinsic evidence is admissible to identify the payee when misnamed, or when designated by description only, but not to explain away an uncertainty patent on the bill.⁴

ILLUSTRATIONS.

The following are valid :

1. Pay to C., D., and E., or the order of any two of them.⁵
2. Pay C. or his agent.—Pay the trustees of the X. Society, or their treasurer for the time being.—Pay C. or his wife.⁶
3. Pay to C., the treasurer for the time being of the X. Company.⁷
4. "Pay on demand, value received of C.," which in effect is "Pay to C. on demand."⁸
5. "Pay to the order of the Treasurer of Portugal." Evidence is admissible to show that C. was Treasurer of Portugal when the bill was issued.⁹
6. "Pay to J. Smythe." Evidence is admissible to show that T. Smith is the person intended to be described thereby.¹⁰

¹ *Smith v. McClure* (1804), 5 East, 476 ; and Cf. *Harvey v. Cane* (1876), 34 L. T. N. S. 64.

² Id.

³ *Cowie v. Sterling* (1856), 6 E. & B. 333 Ex. Ch.

⁴ *Soares v. Glyn* (1845), 8 Q. B. 24 Ex. Ch.

⁵ *Watson v. Evans* (1863), 32 L. J. Ex. 137.

⁶ *Holmes v. Jaques* (1866), 1 L. R. Q. B. 376 ; *Bourdin v. Greenwood* (1871), 13 L. R. Eq. 281.

⁷ *R. v. Box* (1815), 6 Taunt. 325.

⁸ *Green v. Davics* (1835), 4 B. & C. 235.

⁹ *Soares v. Glyn* (1845), 8 Q. B. 24.

¹⁰ *Willis v. Burrett* (1816), 2 Stark. 29 ; *Jacobs v. Benson* (1855), 39 Maine, 132

The following are invalid :

7. "Pay C. or D.,"¹ there being no apparent community of interest.
8. Pay to the treasurer for the time being of the C. institution.²
9. "Pay ——— or order." Evidence is inadmissible to show that C. was intended to be the payee.³
10. "Pay on demand," stating no payee (probably invalid).⁴

Payee
must be
person *in
esse*.

NOTE.—In *Norton v. Ellam* (1837), 2 M. & W. 461, a note in form given in Illustr. 10, seems to have been thought valid, but the point was not raised. Perhaps the note is wrongly set out. See also *Enthoven v. Hoyle* (1852), 13 C. B. at 394. In *United States v. White* (1841), 2 Hill, 59, a note payable to "the order of the indorser," was held valid as being payable to any holder who might indorse it.

Explanation 2.—If the payee of a bill be a fictitious or non-existing person, no title can be made thereto except by estoppel (Art. 139).

Exception.—If a bill be made payable to a deceased person in ignorance of his death, his executors or administrators may adopt the transaction.⁵

ILLUSTRATION.

A. in England draws a bill on B., payable to C., who is in India. At the time the bill is drawn C. is dead, but the fact is not known to A. C.'s administrator may sue A. on the bill.⁶

NOTE.—The New York Draft Code, § 1726, enacts that a bill payable to the order of an obviously fictitious person is to be deemed payable to bearer.

Order to Drawee.

Art. 10. The order to the drawee may be in any form of words, provided it be an unconditional re-

Order to
drawee.

¹ *Blanckenhagen v. Blundell* (1819), 2 B. & Ald. 417.

² *Cowie v. Sterling* (1856), 6 E. & B. 333 Ex. Ch.; *Yates v. Nash* (1860), 29 L. J. C. P. 306.

³ *R. v. Randall* (1811), R. & R. 193. See Art. 23.

⁴ *Minet v. Gibson* (1791), 1 H. Bl. at 608; *Douglas v. Wilkinson* (1831), 6 Wend. 637, New York.

⁵ *Murray v. East India Co.* (1821), 5 B. & Ald. 204.

⁶ *Id.*

Order to
drawee.

quisition for the payment of money absolutely and at all events.¹

ILLUSTRATIONS.

The following are valid, though unusual :

1. "Credit C. or order with 100*l.* in cash."²
2. "Pay, or cause to be paid, to C. or order 100*l.*"³

The following are invalid, as being conditional :

3. Pay C. or order 100*l.*, provided the terms mentioned in my letter be complied with.⁴
4. " " to stand as a set-off for the sum bequeathed to me above the share of X.⁵
5. " " to be held as collateral security for the payment of the money owed him by X. if he cannot realize the other securities.⁶
6. " " in consideration that he will abandon the action now pending.⁷
7. " " not to be demanded in the event of my death.⁸

The following is valid :

8. Pay C. or order 100*l.*, "as per memorandum of agreement."⁹

NOTE—Cf., Art. 13 and Art. 19. As to construction, Cf. Art. 56. Comparing bills with notes, the order to the drawee when accepted corresponds with the promise by the maker. It is the same contract stated conversely. There is, however, this distinction: A bill may not be drawn conditionally, and a note may not be made conditionally; but a bill may be accepted conditionally; therefore the liability of the principal debtor on a bill may be conditional, while the liability of the principal debtor on a note must be absolute. A bill absolute in form may be delivered conditionally. Art. 55.

¹ *Dawkes v. De Lorane* (1771), 3 Wils. at 213.

² *Ellison v. Collingridge* (1850), 9 C. B. 570.

³ *Lovell v. Hill* (1838), 6 C. & P. 233.

⁴ *Kingston v. Long* (1784), 4 Dougl. 9.

⁵ *Clarke v. Percival* (1831), 2 B. & Ad. 660.

⁶ *Robins v. May* (1839), 11 A. & E. 213.

⁷ *Drury v. Macaulay* (1846), 16 M. & W. 146. *Aliter*, if consideration be executed.

⁸ *Richardson v. Martyr* (1855), 25 L. T. Q. B. 64.

⁹ *Jury v. Baker* (1858), E. B. & E. 459.

Explanation 1.—The direction must be imperative, ^{Order to drawee.} not permissive or precative ; but the insertion of mere terms of courtesy will not make it precative.

ILLUSTRATIONS.

1. "Mr. B. will much oblige Mr. A. by paying C. or order."—Valid.¹
2. "Please let bearer have 100*l.*, and you will much oblige me."—Invalid.²
3. "We authorize you to pay C. or order."—Invalid.³

Explanation 2.—An order to pay out of a particular fund does not constitute a bill ; but an absolute order to pay, coupled with (1) a direction to the drawee to reimburse himself out of a particular fund, or (2) a statement of the transaction which gave rise to the bill, is valid.

ILLUSTRATIONS.

The following orders or promises are invalid :

1. Pay C. or order 100*l.* out of the money in your hands belonging to the X. Company.⁴
2. " " out of the money due from X. as soon as you receive it.⁵
3. " " out of the money arising from my reversion when sold.⁶
4. " " on the sale or produce when sold of the X. Hotel.⁷

The following are valid :

5. Pay C. or order 100*l.* as my quarterly half-pay due 1st February by advance.⁸
6. " " being a portion of a value as under, do-

¹ *Ruff v. Webb* (1794), 1 Esp. 129, Lord Kenyon.

² *Little v. Stackford* (1828), 1 M. & M. 171.

³ *Hamilton v. Spottiswoode* (1849), 4 Exch. 200 ; and Cf. *Russell v. Powell* (1845), 14 M. & W. 418. Each case must be determined on its merits.

⁴ *Jenny v. Herle* (1723), 2 Ld. Raym. 1361.

⁵ *Dawkes v. De Lorane* (1771), 3 Wils. 287.

⁶ *Carlos v. Fancourt* (1794), 5 T. R. 482 Ex. Ch.

⁷ *Hill v. Halford* (1801), 2 B. & P. 413 Ex. Ch.

⁸ *Macleod v. Snee* (1728), 2 Stra. 762.

Order to
drawee.

posited in security for the payment
hereof.¹

7. Pay C. or order 100*l.*, against cotton, per "Swallow."²
8. " " on account of moneys advanced by me
for the X. Company.³
9. " " against credit No. 20, and place it to
account, as advised per X. & Co.⁴

NOTE.—See the English and American authorities collected and reviewed: *Munger v. Shannon* (1874), 61 N. Y. 251. An order invalid as a bill may be valid as an equitable assignment. The tendency in New York seems to be to give effect to an order rather as an equitable assignment than as a bill; *e.g.*, the following were held to be payable out of a particular fund: "Pay C. or order 100 dollars, and deduct the same from my share of our partnership profits." "Pay C. or order 100 dollars, on account of twenty-four bales of cotton shipped by you, as per bill of lading." See an order amounting to a bill, distinguished from an order amounting to an equitable assignment, *Glyn v. Hood* (1860), 1 De G. F. & J. at 348.

Explanation 3.—The order must require the payment of money.⁵

ILLUSTRATIONS.

The following are not bills:

1. An order for the delivery to bearer on demand of a certain quantity of iron.⁶
2. Pay C. or order 100*l.* "in good East India bonds."⁷
3. " " "in notes of the chartered banks of
Pennsylvania."⁸
4. " " "in cash or country bank notes."

NOTE.—In *Ex parte Imeson* (1825), 2 Rose, 225, an order to pay in "cash or Bank of England notes" was held invalid. But now, by the Bank Charter Act, 1833, 3 & 4 Will. 4, c. 98, § 6, Bank of England notes are made legal tender. In *Rumball v. Metropolitan Bank* (1877), 2 L. R. Q. B. D. 194, it was held that scrip certifi-

¹ *Haussoullier v. Hartsinck* (1798), 7 T. R. 733.

² Cf. *Inman v. Clare* (1858), Johns. 769.

³ *Griffin v. Weatherby* (1868), 3 L. R. Q. B. 753.

⁴ Cf. *Banner v. Johnston* (1871), 5 L. R. H. L. 157.

⁵ Cf. *Huse v. Hamblin* (1870), 4 Amer. R. 244.

⁶ *Dixon v. Borvill* (1856), 3 Macq. H. L. 1.

⁷ *Buller*, N. P. p. 272.

⁸ *McCormick v. Trotter* (1823), 10 S. & R. 232.

cases of a banking company, payable to bearer, were negotiable for the purpose of passing with a good title to a *bond fide* purchaser for value, who took them without notice that the vendor had no title (following *Goodwin v. Roberts* (1876), 1 L. R. App. Ca. 476, as to foreign scrip). How far such documents would have the other incidents of negotiable instruments was not decided: Cf. Art. 278. Note under Seal.

Explanation 4.—The order must not require the drawee to do any act in addition to the payment of money.¹

ILLUSTRATIONS.

The following are not bills :

1. Pay C. or order 100*l.*, and deliver up the wharf to him.²
2. " " and take up my note for that amount.³

NOTE.—Cf. Art. 277. Note in alternative.

Sum payable.

Art. 11. A Bill of Exchange may be drawn for any sum. Sum payable.

Exception.—A negotiable Bill of Exchange may not be drawn for any sum less than 20*s.*

NOTE.—By 48 Geo. 3, c. 88, § 2, negotiable bills, notes, and cheques, for less than 20*s.* are made void, and by § 3 a penalty is imposed for issuing or negotiating them. But by 23 & 24 Vict. c. 111, § 19, cheques for less than 20*s.* are made lawful. Bills and notes for less than 5*l.*, and over 20*s.*, were regulated by 17 Geo. 3, c. 30; but this Act was suspended, except as to notes payable to bearer on demand, by 26 & 27 Vict. c. 105, and the suspension is continued by 39 & 40 Vict. c. 69. See Art. 279. There are no restrictions as to amount in respect of non-negotiable bills and notes.

Art. 12. The sum for which a bill is drawn must be expressed.⁴ Statement of sum.

¹ *Follet v. Moore* (1849), 4 Exch. at 416

² *Martin v. Chauntry* (1747), 2 Stra. 1271.

³ *Cook v. Satterlec* (1826), 6 Cowen. 108, New York.

⁴ *R. v. Elliott* (1777), 1 Leach, C. C. 175; French Code, Art. 110; German Exchange Law, Art. 4; Cf. Art. 23; and *Pothier*, No. 35.

Statement
of sum.

ILLUSTRATIONS.

1. Bill in this form, "Pay to my order £——." Evidence is not admissible to show that this is a bill for £100.¹

2. Bill in this form, "Pay to my order twenty-five, ten shillings." This is sufficient as a bill for 25*l.* 10*s.*²

Explanation 1.—If the sum payable be expressed in words and also in figures, and there is a discrepancy between the two, the words prevail.³

ILLUSTRATION.

A bill is drawn, "Pay C. or order two hundred pounds." In the margin is superscribed 250*l.* This is a bill for 200*l.* only.⁴

Explanation 2.—The figures may supply an omission in the words.⁵

ILLUSTRATION.

A bill is drawn, "Pay C. or order one hundred." In the margin is inserted 100*l.* This is a bill for 100*l.*⁶

NOTE.—German Exchange Law, Art. 5, provides that if the amount be expressed both times in figures, or both times in words, and there is a discrepancy, the smaller sum is the amount payable.

Sum to be
certain.

Art. 13. The sum payable must be a certain and definite sum.

ILLUSTRATIONS.

The following orders or promises are invalid :

1. Pay C. or order 100*l.*, and all other sums which may be due to him.⁷
2. " " the proceeds of a shipment of goods, value 2000*l.*, consigned by me to you.⁸
3. " " the balance due to me for building the Baptist College Chapel.⁹

¹ *Norwich Bank v. Hyde* (1839), 13 Connecticut, 279 ; and Cf. *Saunderson v. Piper* (1839), 5 Bing. N. C. at 431. See Art. 23.

² *Phipps v. Tanner* (1833), 5 C. & P. 488.

³ *Saunderson v. Piper* (1839), 5 Bing. N. C. 425 ; German Exchange Law, Art. 5.

⁴ *Id.*

⁵ *R. v. Elliott* (1777), 1 Leach, C. C. 175.

⁶ *Id.*

⁷ *Smith v. Nightingale* (1818), 2 Stark. 375.

⁸ *Jones v. Simpson* (1823), 2 B. & C. 318.

⁹ *Crowfoot v. Gurney* (1832), 9 Bing. 372.

4. Pay C. or order 100*l.*, and the demands of the sick club.¹

Sum to be
certain.

5. „ „ 100*l.*, and all fines, according to rule.²

Explanation 1.—The fact that the amount payable is payable by instalments,³ or payable with interest, or that it is to be calculated according to an indicated rate of exchange, does not make it uncertain.

ILLUSTRATIONS.

The following are valid :

1. Pay C. or order 100*l.* “with lawful interest.”⁴

2. „ „ „ payable in Paris or in London, at the choice of the holder, according to the course of exchange upon Paris.”⁵

3. „ „ „ at the exchange, as per indorsement.”⁶

NOTE.—See a statement of the practice as to the sale of foreign bills and the mode of fixing the exchange, *Suse v. Pompe*, 8 C. B. N. S. at 542. To indorse a rate of exchange without authority is a material alteration which avoids a bill: *Hirschfield v. Smith* (1866), 1 L. R. C. P. 340.

Explanation 2.—When a bill is drawn in one country and payable in another, and the amount payable is expressed in the currency of the former, it must be calculated according to the rate of exchange on the day the bill is payable.⁷

ILLUSTRATION.

A. in England draws a bill on B. in France for 100*l.* sterling. The amount in francs which the holder is entitled to receive is determined by the rate of exchange on the day the bill is payable.⁸

Explanation 3.—When a bill is drawn in one country payable in another in the currency of the latter, and such currency is depreciated between the

¹ *Bolton v. Dugdale* (1833), 4 B. & Ad. 619.

² *Ayrey v. Fearnside* (1838), 4 M. & W. 168.

³ Art. 19, Expl. 2.

⁴ Cf. *Warrington v. Early* (1853), 2 E. & B. 763.

⁵ Cf. *Pollard v. Herries* (1813), 3 B. & P. 335.

⁶ *Rouquette v. Overman* (1875), 10 L. R. Q. B. at 531.

⁷ Cf. *Hirschfield v. Smith* (1866), 1 L. R. C. P. at 353; Belgian Code, Art. 33.

⁸ Id.

Sum to be certain. time of issue and of payment, the holder is (perhaps) entitled to be paid according to the former value.¹

ILLUSTRATION.

A bill is drawn in England on Portugal for "100 mille rees." After it is drawn, but before it is payable, a depreciated paper currency is introduced. The holder is entitled to be paid in the former currency or to receive its equivalent.²

NOTE.—This decision seems opposed in principle to *Overman v. Rouquette* (1875), 10 L. R. Q. B. 525, where it was held that the time of payment might be deferred by *ex post facto* legislation, the drawer's liabilities being regulated by the *lex loci solutionis*.

Explanation 4.—When a bill is expressed to be payable with interest, interest runs from the date of the bill, and the amount payable must be calculated accordingly.³

ILLUSTRATIONS.

1. Bill for 200*l.*, expressed to be payable with interest six months after date. The amount payable at maturity is 205*l.*⁴

2. C., a married women, as administratrix, lends 100*l.* to her husband, who makes a note for the amount, expressed to be payable to C. with interest. Interest runs from the date of the note, although C. could not sue on it during her husband's lifetime.⁵

3. B. makes a note, expressed to be payable with interest one year after his death. Interest runs from the date of the note.⁶

NOTE.—When the rate of interest is not expressed, five per cent. is understood. Since the abolition of the Usury Laws there is no limit as to the rate the parties may agree on. In many American States and continental countries usury laws are still in force. As to interest as damages in case of non-payment, see Arts. 213 and 220.

Expression of Consideration.

Value received.

Art 14. It is usual, but not necessary, to insert

¹ *Da Costa v. Cole* (1688), Skin. 272.

² *Id.*

³ *Doman v. Dibdin* (1826), R. & M. 381.

⁴ *Id.*

⁵ *Richards v. Richards* (1831), 2 B. & Ad. 447.

⁶ *Roffey v. Greenwell* (1830), 10 A. & E. 222.

in a bill the words "value received," or some equivalent expression denoting consideration.¹ Value received.

NOTE.—German Exchange Law, Art. 4, does not require the consideration to be stated. By French Code, Art. 110, the nature of the consideration must be stated in the bill. A false statement of value constitutes a "supposition de valeur," and avoids the bill in the hands of parties with notice: *Nouguier*, § 282, 283. See *post*, Consideration, Art. 82.

Explanation 1.—In a Bill of Exchange payable to a third party "value received" means, *prima facie*, value received by the drawer;² but in an accepted bill, payable to drawer's order, it means value received by the acceptor.³

Explanation 2.—When a bill is expressed to be for value received, extrinsic evidence is admissible between immediate parties to prove absence, failure, or illegality of consideration; but when a particular consideration is expressed, extrinsic evidence is not admissible to prove a different consideration.⁴

ILLUSTRATIONS.

1. A note is expressed to be given "for commission for business transacted." In an action by payee against maker, evidence is admissible to show that the consideration wholly failed, and that the payee never earned his commission.⁵

2. A note is expressed to be given "for value received by my late husband." Evidence is not admissible to show that the note was given merely as an indemnity, and that the payee had not been damnified.⁶

3. C., the payee of a bill, expressed to be for value received, sues the acceptor. The acceptor may show that the bill was drawn and accepted for C.'s accommodation.⁷

¹ *Hatch v. Traves* (1840), 11 A. & E. 702.

² *Grant v. Da Costa* (1815), 3 M. & S. 351.

³ *Highmore v. Primrose* (1816), 5 M. & S. 65.

⁴ *Abbot v. Hendricks* (1840), 2 Scott, N. R. 183; and Cf. *Abrey v. Cruz* (1869), 5 L. R. C. P. 37; *Hill v. Wilson* (1873), 42 L. J. Ch. 817.

⁵ *Id.*

⁶ *Rideout v. Bristow* (1830), 1 Cr. & J. 231; Cf. *Nelson v. Serle* (1839),

⁴ M. & W. 795. *Knill v. Williams* (1809), 10 East, 431.

⁷ Cf. *Thomson v. Clutley* (1836), 1 M. & W. 212.

Value
received.

NOTE.—The principle is clear, but the application of it to cases near the line is difficult. In *Abbot v. Hendicks* (1840), 1 M. & Gr. at 796, Maule, J., is reported as saying that a different consideration to the one alleged may be shown; but in 2 Scott, N. R. at 187, he is reported as saying the opposite, and this accords with what the other judges say: Cf. Art. 56.

Explanation 3.—A bill must not be expressed to be given for an executory consideration.¹

NOTE.—An executory (*i.e.*, future) consideration expressed on the instrument would render it conditional, and so invalid as a bill: Cf. Art. 10.

Date of Making.

Date of
making.

Art. 15. It is usual, but not necessary, to insert in a bill the date on which it is drawn.

Explanation.—A bill, expressed to be payable after date, should be dated; but evidence is (perhaps) admissible to show on what day such bill, if undated, was issued, and it takes effect from that time.²

ILLUSTRATION.

A. draws, without dating, a bill on B., payable to C. three months after date. C. can give evidence to show on what day the bill was issued to him?

NOTE.—Byles, Chitty, and Parsons are of this opinion, relying on *Giles v. Bourne*,³ where, however, the point arose on the pleadings and not on the evidence. No question could arise except in the case of a bill payable after date: Cf. the Scotch law, under 19 & 20 Vict. c. 60, § 10. German Exchange Law, Art. 4, requires a bill to be dated; so does the French Code, Art. 110. Pothier (No. 36), writing before the Code, says “Want of a date or mistake therein cannot be taken advantage of by the drawer of the bill, or by the drawee if he accepts it.”

Ante-dat-
ing or post-
dating.

Art. 16. A bill may be ante-dated or post-dated.³

ILLUSTRATION.

A. draws a bill on B., bearing date May 1, payable to C.'s order. C. indorses to D., who sues A. It appears that C. died in April.

¹ *Drury v. Macaulay* (1846), 16 M. & W. 146.

² Cf. *Giles v. Bourne* (1817), 6 M. & S. 73; but Cf. Art. 23.

³ *Usher v. Dauncey* (1814), 4 Camp. 97; *Barker v. Sterne* (1854), 9 Exch. 684, ante-date; *Gatty v. Fry* (1877), 2 L. R. Ex. D. 265, post-dated cheque.

D. may show that the bill was post-dated, and that C. really indorsed it. He can then recover.¹

NOTE.—But bankers licensed under 9 Geo. 4, c. 23, are by § 12 liable to a penalty for issuing post-dated bills or notes unstamped. Under the suspended Act, 7 Geo. 4, c. 6, there was a penalty for post-dating bills under 5*l*. The Acts prohibiting the post-dating of cheques are repealed by the Stamp Act, 1870. To ante-date a deed in order to defraud a third party is forgery: *R. v. Ritson* (1869), 1 L. R. C. C. R. 200. See *passim*, *Re Gomersall* (1875), 45 L. J. Bank. 1, as to drawing ante-dated bills to defraud creditors.

Art. 17. A bill is *prima facie* presumed to have been issued on the day which it bears date.²

Exception 1.—When a bill is tendered in bankruptcy proceedings as evidence of a petitioning creditor's debt, the date must be confirmed by other evidence.³

Exception 2.—A bill bearing date on a Sunday is not presumed to have been issued on that day.⁴

NOTE.—In *Begby v. Levy*, 1 Cr. & J. at 181, the Court seem to think that a bill issued on Sunday would be void in the hands of a holder with notice, but they suggested qualifications. See further an American case, on a note, *Cranston v. Goss* (1871), 109 Mass. 439.

Time of Payment.

Art. 18. A bill may be payable (1) on demand, or (2) at a determinate future time.

A bill is payable on demand which is expressed to be so payable, or in which no time for payment is expressed.⁵

Explanation.—A bill expressed to be payable

¹ *Pasmore v. North* (1811), 13 East, 517.

² *Roberts v. Bethell* (1852), 12 C. B. at 778.

³ Cf. *Anderson v. Weston* (1840), 6 Bing, N. C. at 301.

⁴ *Begby v. Levy* (1830), 1 Cr. & J. 180.

⁵ *Whillock v. Underwood* (1823), 2 B. & C. 157; *Aldous v. Cornwall* (1868), 3 L. R. Q. B. 573.

Bill payable on demand. "at sight" or "on presentation" is, for all purposes, to be deemed payable on demand.¹

NOTE.—A bill accepted after it is due, is, as against the acceptor, a bill payable on demand.²

Bill payable in futuro. Art. 19. A bill payable at a future time may be expressed to be payable—

- (1.) At a fixed future time.
- (2.) At a fixed period after date.
- (3.) At a fixed period after sight.
- (4.) On, or at a fixed period after, the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.³

Explanation 1.—An instrument expressed to be payable on a contingency does not constitute a bill; and the happening of the event does not cure the defect.⁴

ILLUSTRATIONS.

The following are valid :

1. Pay C. or order 100*l.* ten days after the death of X.⁵
2. " " two months after H.M. ship "Swallow" is paid off.⁶
3. " " on the 1st January, when he comes of age.⁷
4. " " one year after notice.⁸
5. " " one year after my death.⁹
6. " " two months after demand in writing.¹⁰

¹ 34 & 35 Vict. c. 74.

² Cf. Art. 34, Time of acceptance.

³ *Coleman v. Cooke* (1742), Willes, 393 ; Cf. Art. 10.

⁴ Id. at 399 ; and *Carlos v. Fancourt* (1794), 5 T. R. 482.

⁵ *Coleman v. Cooke* (1742), Willes, 393.

⁶ Id. at 399.

⁷ *Goss v. Nelson* (1757), 1 Burr. 228.

⁸ *Clayton v. Gooling* (1826), 5 B. & C. 360.

⁹ *Raffey v. Greenwell* (1839), 10 A. & E. 222.

¹⁰ *Price v. Taylor* (1860), 5 H. & N. 540.

7. Pay C. or order 100*l.* five years after the opening of the S. Bill payable in
Railway.¹ *futuro.*

The following are invalid :

8. Pay C. or order 100*l.*, when I marry X.²
9. " " when I am in good circumstances.³
10. " " thirty days after the arrival of ship
 "Swallow" at Calcutta.⁴
11. " " ninety days after sight, or when rea-
 lized.⁵
12. " " ninety days after the dissolution of
 partnership between C. and X. and
 the settling of the books.⁶

NOTE.—Under the French Code, Art. 129, and German Exchange Law, Art. 4, such forms as are given in Illustrations 1 to 6 would probably be invalid. A bill, however, may be made payable at a particular fair or market (*en foire*), though the day on which it will be held is not known. Such bills seem to have been anciently known in England as "billæ nundinales."⁷

Explanation 2.—A bill may be expressed to be payable by stated instalments, and may provide that upon default in payment of one instalment the whole is to become due.⁸

ILLUSTRATIONS.

1. Pay C. or order 100*l.*, "by two equal instalments, due 1st. January and 1st July." This is valid.⁹
2. " " "by instalments," not stating date or amount. This is invalid.¹⁰
3. " " "by ten equal instalments, payable, &c., all instalments to cease on the death of X." This is invalid.¹¹

¹ Cf. *Ex parte Gibson* (1869), 4 L. R. Ch. 662. No objection raised.

² *Pearson v. Garret* (1694), 4 Mod. 242.

³ *Ex parte Tootell* (1798), 4 Ves. 372.

⁴ *Palmer v. Pratt* (1824), 2 Bing. 185.

⁵ *Alexander v. Thomas* (1851), 16 Q. B. 335.

⁶ *Sackett v. Palmer* (1857), 25 New York, R. 179.

⁷ Cf. *Colehan v. Cooke* (1742), Willes, at 399. See French Code, Art. 133; German Exchange Law, Art. 33.

⁸ *Carlton v. Kenealy* (1843), 12 M. & W. 139; *Cook v. Horne* (1873), 29 L. T. N. S. 369.

⁹ *Gaskin v. Davis* (1860), 2 F. & F. 294.

¹⁰ *Moffat v. Edwards* (1841), Car. & M. 16.

¹¹ *Worley v. Harrison* (1835), 3 A. & E. 669.

Computa-
tion of
time of
payment.

Art. 20. In computing time, unless the contrary be expressed, three Days of Grace are added to the nominal time of payment in the case of all bills not payable on demand.¹

If a bill be payable after date, after sight, or after the happening of some event, the nominal time of payment is determined by excluding the day from which time is to run, and including the day of payment.²

“Month” means calendar month.³

ILLUSTRATIONS.

1. A note dated 31st January is payable one month after date, “without grace.” It is due on February 28. A similar note, dated January 1, would be payable on February 1.⁴

2. A note for 100*l.* is made payable by two equal instalments, on January 1 and February 1. The instalments fall due on January 4 and February 4.⁵

3. A bill dated January 1 is payable thirty days after date. It is due on February 3.

4. A non-negotiable note, not payable on demand, is entitled to days of grace.⁶

NOTE.—It is believed that all countries, except those where the Greek Church is the prevailing religion, use the New Style, or Gregorian Calendar. The number of days of grace allowed differs in different countries. By French Code, Art. 135, and German Exchange Law, Art. 33, days of grace are abolished. The Indian Draft Code proposed to do the same. The Bank of England pays its own bills without taking grace.

“After sight” in a Bill of Exchange means after

¹ *Oridge v. Sherborne* (1843), 11 M. & W. at 381, *Bowen v. Newell* (1853), 8 New York, 190; Cf. Art. 18.

² *Campbell v. French* (1795), 6 T. R. at 212; Story, § 329; *Roehner v. Knickerbocker Life Ass. Co.* (1875), 63 New York, 160; and Cf. German Exchange Law, Art. 32.

³ *Webb v. Fairmaner* (1838), 3 M. & W. 478; Cf. German Exchange Law, Art. 32; French Code, Art. 132.

⁴ Cf. *Roehner v. Knickerbocker Life Ass. Co.* (1875), 63 New York, R. 160.

⁵ *Oridge v. Sherborne* (1843), 11 M. & W. 381.

⁶ *Smith v. Kendal* (1794), 6 T. R. 123.

acceptance or protest for non-acceptance, *i.e.*, sight evidenced on the bill.¹

Computation of time of payment.

ILLUSTRATIONS.

1. The holder of a foreign bill, payable sixty days after sight, makes an agreement that if it be dishonoured by non-acceptance, he will re-present it for payment at maturity. Acceptance is refused. The time of payment must be calculated from the day the bill was protested, and not from the day of presentment to the drawee for acceptance.²

2. A bill is payable three months after sight. The acceptance bears date January 1. The bill is due on April 4.

3. Bill payable after sight is noted for non-acceptance on January 1. It is accepted *supra protest* on January 5. The time of payment (probably) must be calculated from January 1.³

NOTE.—As a promissory note cannot be accepted, “after sight,” in a note, means after mere exhibition to the maker.⁴ A bill presented for acceptance is usually left for twenty-four hours with the drawee, but the custom is for the acceptance to bear date the day of presentment, and not the day of return to the holder—*e.g.*, a bill presented on a Saturday is accepted and returned on the Monday; the acceptance should bear date of the Saturday. The holder is probably entitled to this as a matter of right.

“Usance” means customary time, *i.e.*, the time for payment as fixed by custom, having regard to the place where a bill is drawn and the place where it is payable.

ILLUSTRATION.

The usance between London and Amsterdam is one month; therefore a bill drawn in Amsterdam, dated January 1, payable in London at double usance, falls due on March 4.⁵

NOTE.—When the usance is a month, half usance means fifteen days: Cf. *Pothier*, No. 15. The existence of a usance will not be judicially noticed: it must be proved.

¹ *Campbell v. French* (1795), 6 T. R. 200, Ex. Ch.; Cf. French Code, Art. 131; German Exchange Law, Art. 32.

² *Id.*

³ Such is the practice: see *contrà dicta* in *Williams v. Germaine* (1827), 7 B. & C. 468 at 471.

⁴ *Sturdy v. Henderson* (1821), 4 B. & Ald. 592; and Cf. *Dixon v. Nuttall* (1834), 1 C. M. & R. 307, prior to 34 & 35 Vict. c. 74.

⁵ Cf. *Mutford v. Walcot* (1700); 1 Ld. Raym. 574.

Computa-
tion of
time of
payment.

When a bill falls due on Sunday, Christmas Day, Good Friday, or on a day appointed by proclamation for a fast or thanksgiving, it is deemed to be due on the preceding day.¹

When a bill falls due on a Bank holiday, it is deemed to be due on the succeeding day.²

ILLUSTRATION.

A bill is payable three months after date. The last day of grace is the day after Christmas Day, a Bank holiday. It is due on the 27th December; but if the last day of grace was Christmas Day, it would be due on the 24th; and if the 24th was a Sunday, it would be due on the 23rd.

NOTE.—By French Code, Art. 134, a bill which falls due on a *dies non* (*ferié légal*) is payable the day before.

The computation of time is determined by the law of the place of payment.³

ILLUSTRATIONS.

1. A bill is drawn in England, payable in Paris three months after date. After it is drawn, but before it is due, a moratory law is passed in France postponing the maturity of all current bills for one month. The maturity of this bill is for all purposes to be determined by French law.⁴

2. By French law, days of grace are not allowed. A bill drawn in France, payable in England, is entitled to three days' grace; but a bill drawn in England, payable in France, is not entitled to grace.⁵

Place of Making and Payment.

Place of
making.

Art. 21. It is usual, but not necessary to state in a bill the place where it is drawn.

NOTE.—By 9 Geo. 4, c. 65, a penalty is imposed on the issue or negotiation in England of bills or notes of less than 5*l.*, payable to bearer on demand, which are made or purport to be made in

¹ 39 & 40 Geo. 3, c. 42; 7 & 8 Geo. 4, c. 15.

² 34 & 35 Vict. c. 17, § 1 & 2; The Bank Holidays Act, 1871.

³ *Rouquette v. Overman* (1875), 10 L. R. Q. B. 525.

⁴ *Id.*

⁵ *Id.* at 535—538.

Scotland or Ireland : and see Art. 279. In France, the place where a bill is drawn must be stated, for a bill cannot be drawn and payable in the same place. There must be a possible rate of exchange between the place where it is drawn and the place where it is payable : French Code, Art. 110 ; *Nouquier*, § 93—105. In Germany the law is the same as in England.

Art. 22. The drawer of a Bill of Exchange may or may not indicate a place of payment therein: he may also indicate an alternative place of payment.¹

NOTE.—By French Code, Art. 110, and German Exchange Law, Art. 4, the place of payment must be stated. As to the effect of the drawer stating or not stating a place of payment, see Art. 166. Presentment for Payment.

Explanation.—The drawer of a bill may make it payable at the house or place of business of some person other than the drawee.²

ILLUSTRATION.

A. may draw a bill on B., in Liverpool, payable at Messrs. X. & Co.'s, bankers, London.

NOTE.—The person at whose house or place of business a bill is drawn or accepted payable is sometimes called the “domiciliary,” from the French term “domiciliaire,” and the bill is said to be “domiciled” where payable.

Inchoate Bills.

Art. 23. A mere signature on a blank stamped paper is a *prima facie* authority³ to the person to whom it is given⁴ to fill it up as a bill for any amount the stamp will cover, using the signature at his option, either as the drawer's or the acceptor's;⁵ and if the bill when complete be negotiated to a holder for value without notice, the presumption of authority becomes absolute.⁶

¹ *Bayley; Chitty; Story*. Cf. *Pollard v. Herries* (1803), 3 B. & P. 385.

² Cf. French Code, Art. 111.

³ *Hatch v. Searles* (1854), 2 Sm. & G. at 152, 153.

⁴ Cf. *Bazendale v. Bennet* (1878), 3 L. R. Q. B. D. 525, C. A. (stolen bill).

⁵ *Collis v. Emmet* (1790), 1 H. Bl. 813; *Molloy v. Delves* (1831), 7 Bing. 428.

⁶ *Hatch v. Searles*, *supra*; *Foster v. Mackinnon* (1869), 4 L. R. C. P. at 712.

Blank
signatures.

ILLUSTRATIONS.

1. A. draws a bill on B. payable to ——— or order. Any *bonâ fide* holder may write his own name in the blank, and sue on the bill.¹

2. B., who is indebted to X., gives him an acceptance for 100*l.* on a blank paper. X. dies. His administrator fills up the paper as a bill payable to drawer's order, inserting his own name as drawer. He can sue B. on the bill.²

Explanation 1.—As between immediate parties (Art. 88) the bill must be filled up within a reasonable time.³ Reasonable time is a question of fact.⁴

Explanation 2.—As between immediate parties the bill must be filled up and negotiated in accordance with the authority given.⁵

ILLUSTRATIONS.

1. B. and X. sign as makers a joint and several note, with blanks for the date and payee's name. B. signs on condition that the note shall only be issued if Y. also will join as maker. Y. refuses. X., who is in possession of the note, represents to C. that he has authority to issue it. He fills in C.'s name as payee, and transfers the note to him for value. C. cannot sue B.⁶

2. B. gives X. a blank acceptance for 500*l.*, in order that he may get it discounted for him. X. has the bill filled up as payable to drawer's order, and gets A. to sign as drawer and indorser in a fictitious name. X. then negotiates the bill, and it gets into the hands of E., who takes it *bonâ fide* for value and without notice. None of the money reaches B.'s hands. E. can sue B.⁷

Explanation 3.—The bill takes effect and the liabilities of the parties accrue from the time it is

¹ *Crutchley v. Mann* (1814), 5 Taunt. 529; Cf. Art. 9.

² *Scard v. Jackson* (1876), 34 L. T. N. S. 65.

³ *Mulhall v. Neville* (1852), 8 Exch. 391; *Montague v. Perkins* (1853), 22 L. J. C. P. 187.

⁴ *Temple v. Pullen* (1853), 8 Exch. 389.

⁵ *Arde v. Dixon* (1851), 6 Exch. 869; *Hatch v. Searles* (1854), 2 Sm. & G. 147, at 152; *Hanbury v. Lovett* (1868), 18 L. T. N. S. 366.

⁶ *Arde v. Dixon*, ante.

⁷ *Schultz v. Astley* (1836), 2 Bing. N. C. 544.

completely filled up and issued, and not from the time the signature was given.¹ Blank signatures.

ILLUSTRATIONS.

1. B., a bankrupt, gives a blank acceptance. It is filled up and negotiated after the close of the bankruptcy. The holder can sue, for it did not constitute a proveable debt.²

2. An incomplete bill is not a security for the payment of money within the meaning of the Carriers Act.³

NOTE.—An instrument which is wanting in some one or more of the requisites of a complete bill, is in effect a transferable authority to create a bill, and while incomplete is subject to the ordinary rules of law relating to authorities—*e. g.*, an authority emanating from a firm is not revoked by the death of a partner.⁴

Inland and Foreign Bills.

Art. 24. Bills are either inland or foreign. “Inland bill” (except for stamp purposes: Cf. pp. 230, 231) means a bill— Inland bill defined.

(1.) Both drawn and payable within the British islands; or,

(2.) Drawn within the British islands, and drawn upon some person resident therein.

All other bills are foreign bills. “British islands” mean any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney and Sark, and the islands adjacent to any of them, being part of the dominions of her Majesty.⁵

Explanation.—Unless the contrary appear by its

¹ *Temple v. Pullen* (1853), 8 Exch. 389; *Montague v. Perkins* (1853), 22 L. J. C. P. 187; *Ex parte Hayward* (1871), 6 L. R. Ch. 546.

² *Goldamid v. Hampton* (1858), 5 C. B. N. S. 94.

³ *Stoessiger v. South Eastern Railway* (1854), 3 E. & B. 549.

⁴ *Usher v. Dauncey* (1814), 4 Camp. 97.

⁵ 19 & 20 Vict. c. 97, § 7.

Inland bill terms, the *prima facie* presumption is that a bill defined. is an inland bill.¹

ILLUSTRATIONS.

1. A. in Liverpool draws a bill on B. in London, who accepts it, payable there. It is indorsed in France. This is an inland bill.²

2. A. in London draws a bill on B., who resides in London. B. accepts it, payable in Paris. This is an inland bill.

3. A. in London draws a bill upon B. in Brussels, but payable in London. B. accepts it. This is (probably) an inland bill.³

Bill of Exchange drawn in a Set.

Whole set
one bill.

Art. 25. A Bill of Exchange may be drawn in a set, each part of the set being numbered and containing a reference to the other parts. All the parts constitute but one bill.⁴

ILLUSTRATIONS.

1. If one part of a set omit reference to the rest it becomes a separate bill in the hands of a *bonâ fide* holder.⁵

2. An agreement to deliver up an unaccepted bill drawn in a set is an agreement to deliver up all the parts in existence.⁶

Explanation.—A person who negotiates a Bill of Exchange drawn in a set, is bound to deliver up all the parts in his possession, but by negotiating one part he does not warrant that he has the rest.⁷

NOTE.—In England the obligation to give a set is probably a matter of bargain. By German Exchange Law, Art. 66, the payee is entitled to demand a set from the drawer; and if a bill, issued singly, be destroyed or lost, the indorsee can obtain a

¹ Cf. *Armani v. Castrique* (1844), 13 M. & W. 443.

² Cf. *Lebel v. Tucker* (1867), 3 L. R. Q. B. 77.

³ *Amner v. Clarke* (1835), 2 C. M. & R. 468.

⁴ Cf. French Code, Art. 110; and *Société Générale v. Metropolitan Bank* (1878), 27 L. T. N. S. 849.

⁵ German Exchange Law, Art. 66; and Cf. French Code, Art. 147.

⁶ *Kearney v. West Granada Co.* (1856), 26 L. J. Ex. 15. Ratio decidendi not clear. How could drawee of unaccepted bill be liable to the holder? He might be to the drawer ultimately.

⁷ *Pinard v. Klockman* (1863), 32 L. J. Q. B. 82.

second of exchange by addressing himself to his immediate indorser, Whole set who applies to the indorser before, and so on up to the drawer. one bill.
 French law seems to be the same: *Nouguier*, § 205 and 219. The parts of a set (*duplicata*) must be distinguished from copies (*copie*): *Nouguier*, § 209; and German Exchange Law, Art. 70—72.

Art. 26. Only one part of a set requires to be stamped. The remaining parts are exempt, “unless Stamp on set.
 issued or in some manner negotiated apart” from the stamped part. If the stamped part of a set be lost or destroyed, the unstamped parts are admissible in evidence on proof of such loss or destruction.¹

NOTE.—Presentment for acceptance is not a negotiation.² Compare the terms of the present Stamp Act, quoted above, with those of the repealed Act 17 & 18 Vict. c. 83, § 6, which made it necessary for the holder to hold all the parts of a set. What, if any, is the effect of the change on the questions raised by Arts. 27—30?

Art. 27. A holder who negotiates a set by indorse- Indorse-
 ment, may (and perhaps should) indorse all the parts ment of
 that he holds.³ set.

Explanation.—If an indorser indorse two parts to different persons, he is (probably) liable on both, and every indorser subsequent to him is liable on the part he has himself indorsed.⁴

NOTE.—The practice is for the indorser to indorse all the parts he holds. His position is analogous to that of the drawer. It is said an indorser is not bound to pay unless all the parts bearing his indorsement are given up to him or accounted for.⁵ But in America it is held that in the case of an accepted bill it is sufficient if the accepted part be given up, and in the case of an unaccepted bill if the protested part be given up; there being no presumption that the missing parts have been improperly negotiated.⁶

Art. 28. The acceptance may be written on any Accept-
 ance of
 set.

¹ 33 & 34 Vict. c. 97, § 55.

² Cf. *Griffin v. Weatherby* (1868), 3 L. R. Q. B. at 760.

³ Cf. *Société Générale v. Metropolitan Bank* (1873), 27 L. T. N. S. 849; *Nouguier*, § 218.

⁴ Id.; and *Holdsworth v. Hunter* (1830), 10 B. & C. 449; German Exchange Law, Art. 67; Indian Draft Code, Art. 116.

⁵ *Société Générale v. Metropolitan Bank* (1873), 27 L. T. N. S. at 854.

⁶ *Downes v. Church* (1839), 13 Peters, 205; *Story*, J.; 3 Kent. Com. 109.

Accept-
ance of
set.

part of a set,¹ and it should be written on one only.²

NOTE.—Indian Draft Code, Art. 117, provides: "When one of a set has been sent for acceptance, the sender should, upon the others of the set, make a note of the address of the person in whose hands the part so sent for acceptance is. The omission to make such note does not deprive the holder of his right to negotiate the bill, but renders the sender responsible for damage resulting to any holder from such omission. The person in possession of the part sent for acceptance is bound to deliver it to the holder of the set to which such part belongs": Cf. German Exchange Law, Art. 68. This accords with mercantile usage.

Payment
of set.

Art. 29. Payment in due course of one part of a set discharges the whole bill.³

Exception 1.—If the drawee accept two parts, and such parts get into the hands of different *bond fide* holders, he is (probably) liable to pay both.⁴

Exception 2.—If the acceptor pay without requiring the part bearing his acceptance to be delivered up to him, and such part be at maturity, outstanding in the hands of a *bond fide* holder, he is (probably) not discharged.⁵

ILLUSTRATION.

B. accepts a third of exchange. At maturity, the first and second are presented to him and he pays. It turns out that the third of exchange, with his acceptance on it, was at the time in the hands of a *bond fide* holder. B. is still liable to pay the third of exchange.

Exception 3.—The indorser who has indorsed two parts to different persons, and indorsers subsequent to him of the part not paid, are (probably) not discharged (Art. 27).

¹ 19 & 20 Vict. c. 97, § 6.

² Cf. *Holdsworth v. Hunter* (1830), 10 B. & C. 449.

³ *Byles*; French Code, Art. 147; German Exchange Law, Art. 67.

⁴ Cf. *Holdsworth v. Hunter* (1830), 10 B. & C. 449; *Ralli v. Dennistoun* (1851), 6 Exch. at 496; German Exchange Law, Art. 67.

⁵ Cf. French Code, Art. 148; German Exchange Law, Art. 67; and see *Kearney v. West Granada Co.* (1856), 1 H. & N. 412.

NOTE.—The exceptions as stated accord with mercantile opinion. Payment of set.
Most foreign codes contain Exception 2. Art. 30, however, raises
a difficulty.

Art. 30. If the parts of a set be negotiated to different persons, the holder whose title first accrues is (perhaps) entitled to the whole set.¹ Right of holder of one part.

ILLUSTRATION.

C., the holder of a bill drawn in a set, negotiates the third of exchange to D. Two days afterwards he negotiates the first and second to E. D. can compel E. to deliver up to him the first and second.²

NOTE.—This Art. is not necessarily inconsistent with Arts. 27 and 29, where the liability of the acceptor or indorser depends on estoppel and is independent of title to the bill. In the case given, E. would not be without remedy. He could get back from C. the money he had given for the bill as money paid for a consideration which had failed, or he could bring an action against C. for false representation.

Acceptance of Bill of Exchange.

Art. 31. "Acceptance" is the assent in due form by the drawee of a Bill of Exchange to the order of the drawer. Acceptance defined.

Art. 32. The acceptance of a Bill of Exchange must be in writing thereon, and signed by the drawee.³ Requisites in form.

Unless the contrary be expressed, the term "acceptance" means an acceptance completed by delivery, or notification to the holder, in order to give effect thereto.⁴

ILLUSTRATIONS.

1. A. draws a bill on B. B. writes thereon the word "Accepted," but does not sign it. This is not an acceptance.⁵

¹ *Perreira v. Jopp* (1798), cited 10 B. & C. at 450; see at 454.

² *Id.*

³ 19 & 20 Vict. c. 97, § 6; French Code, Art. 122; German Exchange Law, Art. 21.

⁴ *Smith v. McClure* (1804), 5 East, 476; Cf. Art. 53.

⁵ 19 & 20 Vict. c. 97, § 6.

Requisites
in form.

2. A. draws a bill on B. B. writes a letter to A. promising to pay the bill, and shows the letter to the holder. This is not an acceptance.¹

3. A. draws a bill on B. B. merely writes his name thereon, without adding the word "accepted" or any equivalent expression. This is sufficient.²

4. The drawee of a bill writes an acceptance on the back of it. This is (probably) sufficient.³

NOTE.—As to signature (Art. 49). As to bill in a set (Art. 28). By German Exchange Law, Art. 21, an acceptance once written cannot be cancelled; but in France, as in England, an acceptance may be cancelled by the drawee as long as he retains possession of the bill, qua drawee: Cf. Art. 53 n. At common law, a verbal acceptance was valid, and the common law still prevails in some of the American States; *e. g.*, Massachusetts and Illinois.⁴ The usual mode of accepting is for the drawee to write "accepted" across the face of the bill, and then to sign his name underneath; but the drawee may use any form of words from which the intention to accept can be gathered.⁵ In France the mere signature of the drawee is not sufficient: *Nouguier*, § 490; but German Exchange Law, Art. 21, expressly provides that it shall be so. Some of the continental codes require the precise term "accepted" to be used; *e. g.*, the Spanish.

Undated
accept-
ance.

Art. 33. An acceptance need not be dated.

Explanation.—In the case of a Bill of Exchange payable after sight, the acceptance should be dated, but extrinsic evidence is (probably) admissible to show on what date an undated acceptance was given.⁶

NOTE.—French Code, Art. 122, provides that if a bill be payable after sight and the acceptance be not dated, time runs from the date of the bill; but see *Nouguier*, § 498.

Time of
accept-
ance.

Art. 34. A Bill of Exchange may be accepted—

(1.) Before it has been signed by the drawer, or while otherwise incomplete;⁷

¹ 19 & 20 Vict. c. 97, § 6.

² 41 & 42 Vict. c. 13, § 1 (Bills of Exchange Act, 1878); *Spear v. Pratt* (1842), 2 Hill, 582, New York.

³ *Young v. Glover* (1857), 3 Jur. N. S. 637, per Ld. Campbell.

⁴ See *Scudder v. Union Nat. Bank* (1876), 2 Otto, Sup. Ct. U. S., 406; and Art. 59.

⁵ Cf. *Smith v. Virtue* (1860), 30 L. J. C. P., at 60, Byles, J.

⁶ *Parsons*, 282; and Cf. Art. 15, and 158, n.

⁷ *Harvey v. Cane* (1876), 34 L. T. N. S. 64; and Art. 23.

- (2.) After it is overdue;
 (3.) After it has been dishonoured by a previous refusal to accept, or by non-payment.¹

Time of
accept-
ance.

ILLUSTRATIONS.

1. A. draws a bill on B., dated January 1, payable one month after date. C., the holder, presents it for acceptance in March. B. accepts. As regards B. this is a valid acceptance of a bill payable on demand.²

2. The holder of a bill payable one month after sight presents it to the drawee for acceptance. Acceptance is refused. A week after, it is re-presented, and accepted. The acceptance is valid.³

NOTE.—When a bill payable after sight is refused acceptance, and then subsequently accepted, the now uniform practice is to ante-date the acceptance to the day the bill was first presented.

Art. 35. Unless the contrary appear, a Bill of Exchange is *prima facie* deemed to have been accepted before maturity and within a reasonable time after its issue, but there is no presumption as to the exact time of acceptance.⁴

Presump-
tion as to
time of
undated
accept-
ance.

ILLUSTRATION.

B. accepts, without dating, a bill drawn payable three months after date. He attains his majority the day before the bill matures. This is *prima facie* evidence that B. accepted it while an infant.⁵

Art. 36. An acceptance must not express that the acceptor will perform his contract by any other means than the payment of money.⁶

Accept-
ance must
be to pay
money.

ILLUSTRATION.

A. draws a bill on B. for 100*l.* B. accepts it, "payable in bills," or "payable in goods." This is invalid.⁷

NOTE.—When the time of payment comes, the holder may, of course, accept goods or bills in satisfaction of the debt due to him.

¹ Cf. *Christie v. Peart* (1841), 7 M. & W. 491 and Art. 157.

² *Mutford v. Walcot* (1698), 1 Ld. Raym. 574; Cf. Art. 201, n.

³ *Wynne v. Raikes* (1804), 5 East, 514.

⁴ *Roberts v. Bethell* (1852), 12 C. B. 778; Cf. Art. 132.

⁵ Id.

⁶ *Russell v. Phillips* (1850), 14 Q. B. 891; Cf. Art. 10, Expl. 3.

⁷ Id.; Cf. *Boehm v. Garcias* (1807), 1 Camp. 425.

NOTE.—ART. 17. The acceptance of a Bill of Exchange by a party other than the drawer is invalid.

Example.—Acceptance by X alone. (Art. 42.)

Illustrations.

1. Bill addressed to B. B. alone accepts in B. X is not liable as acceptor.

2. Bill addressed to B. B. & X. B. alone writes an acceptance in B. X is not liable as acceptor.

3. Bill addressed to the "Directors of the B. Company." The acceptance is signed by the directors and the manager. The manager's signature is accepted.

NOTE.—In a case I need accept otherwise than *express protest*! On this subject see Art. 10, 11, 12, and 13, as seem to think that *implied protest* by the bank is sufficient in Bills, 10th ed. 114. The custom practice is to *imply accept express protest*.

Explanation 1.—When a Bill of Exchange is addressed to two or more drawees, whether partners or not, any one of them may accept so as to bind himself.¹

Illustrations.

1. A bill is addressed to B. & Co. X, a partner in that firm, accepts it in his own name. He is liable as acceptor.²

2. A bill is addressed to B. and X. B. alone accepts. He is liable as acceptor.³

NOTE.—In *Mason v. Ramsey* (1808), 1 Camp. 304, a bill was addressed to a firm, and accepted by a partner in his individual name. Held that the firm was bound; but looking at the *ratio decidendi*, it may be doubted whether the case holds good since 19 & 20 Vict. c. 97, § 6, which requires an acceptance to be signed by the acceptor. In America, the firm in such case is not bound.⁴

Explanation 2.—A Bill of Exchange may (prob-

¹ *Davis v. Clarke* (1844), 6 Q. B. 16.

² *Jackson v. Hudson* (1810), 2 Camp. 447.

³ *Holt v. Morrell* (1840), 12 A. & E. 745.

⁴ *Queen v. Von Uter* (1850), 10 C. B. 318.

⁵ *Id.*

⁶ *Id.*

⁷ *Cunningham v. Smithson* (1841), 12 Leigh, 32.

ably) be accepted by the drawee in any name he chooses to adopt.¹

Drawee
only can
accept.

ILLUSTRATIONS.

1. A bill is addressed to B. His wife accepts it, signing her name "Mary B." B. promises to pay the bill. He is liable as acceptor.²

2. Bill addressed to B., who is a partner in the firm of X. & Co., B. accepts it in the firm name. B. personally is liable as acceptor.³

NOTE.—*Lindus v. Bradwell*¹ was decided before the stat. 19 & 20 Vict. c. 97, § 6; but it has not been questioned here or in America, and it seems to support the proposition submitted in Expl. 2. It may, perhaps, depend somewhat on the peculiar relations of husband and wife.

Explanation 3.—In construing an acceptance, the address to the drawee and the acceptance must be read together.

ILLUSTRATIONS.

1. A bill is addressed to the B. Company, Limited. Two of the directors accept it, signing thus: "X. & Y., directors of the B. Co., Limited." This is an acceptance by the company.⁴

2. A bill is addressed to "B., general agent of the X. Company." He accepts it thus: "Accepted on behalf of the company—B." B. is personally liable as acceptor.⁵

3. A bill is addressed to "X. & Co." The proper style of the firm is "B. X. & Co.," and it is accepted in that name. This is a valid acceptance.⁶

NOTE.—In the case of signatures by agents there is this distinction between a bill and a note. A bill can only be accepted by the drawee; so either the drawee is liable as acceptor, or no one is liable, and the rule of construction is *ut res magis valeat quam pereat*. When the point arises on a note, the only question is whose is the signature—is it the signature of the principal or of the agent?⁷

Art. 38. An acceptance may be—(a), General, General
accept-
ance.

¹ *Lindus v. Bradwell* (1848), 5 C. B. at 591; Cf. Art. 71, Expl. 2.

² *Id.*

³ *Nicholls v. Diamond* (1853), 9 Exch. 154; Cf. Art. 72, Expl. 3.

⁴ *Okell v. Charles* (1876), 34 L. T. N. S. 822, C. A.

⁵ *Herald v. Connah* (1876), 34 L. T. N. S. 855; *Mare v. Charles* (1856), 5 E. & B. 978.

⁶ *Lloyd v. Ashby* (1831), 2 B. & Ad. 23.

⁷ Cf. *Alexander v. Sizer* (1869), 4 L. R. Ex. at 105.

General or absolute acceptance. or—(b), Qualified.¹ A General or Absolute acceptance assents without qualification to the order of the drawer. The form of words used is immaterial.²

NOTE.—The holder of a bill is entitled to an absolute acceptance: Art. 158; Cf. Art. 58 as to construction.

Qualified acceptance. Art. 39. A Qualified acceptance varies the effect of the bill as drawn; therefore an acceptance is qualified which is,

- (1.) Conditional—i. e., which makes payment by the acceptor dependent on the fulfilment of a condition therein stated.

ILLUSTRATIONS.

1. The drawee of a bill accepts it "Accepted—payable on giving up bills of lading for clover, per ship 'Amazon.'"³

2. Or, "Accepted—payable when in funds."⁴

- (2.) Partial, or restricted as to amount.

ILLUSTRATIONS.

1. A. draws a bill on B. for 100*l*. B. accepts it as to 50*l*.⁵

2. A. draws a bill on B. for 100*l*. B. accepts it, payable half in money, half in goods. This is valid as a qualified acceptance for 50*l*.⁶

- (3.) Local, or restricted as to place of payment.

Explanation.—An acceptance to pay at a particular place is to be deemed a general acceptance, unless it express that the bill is to be paid there only, and not otherwise or elsewhere.⁷

ILLUSTRATIONS.

1. B. accepts a bill "payable at Messrs. X. & Co.'s," his bankers. This is a general acceptance.⁸

¹ *Rowe v. Young* (1820), 2 Bligh. 391, H. L.

² *Id.* See at 454, per Holroyd, J., *Boehm v. Garcias* (1807), 1 Camp. 425.

³ *Smith v. Virtue* (1860), 30 L. J. C. P. 56; Cf. *Swan v. Cox*, (1814), 1 Marsh. 170. *Re Howe* (1871), 6 L. R. Ch. 838.

⁴ *Id.*; and *Julian v. Sherbrooke* (1754), 2 Wils. 2.

⁵ *Cf. Wegersloffe v. Keene* (1700), 1 Stra. 214.

⁶ *Petit v. Benson* (1697), Com. verb. 452; Cf., *Rowe v. Young* (1820), 2 Bligh. at 409.

⁷ 1 & 2 Geo. IV. c. 78, § 1. This statute does not apply to notes: *Emblin v. Dartnell* (1844), 12 M. & W. 830.

⁸ *Cf. Halstead v. Skelton* (1840), 5 Q. B. 86, Ex. Ch.

2. B. accepts a bill, "payable at Messrs. X. & Co.'s, and not elsewhere." This is a qualified acceptance.¹

Qualified
accept-
ance.

(4.) Qualified as to time.

ILLUSTRATIONS.

1. A. draws a bill on B., payable two months after date. B. accepts it, payable six months after date.²

2. B. accepts a bill drawn on him, "on condition that it be renewed," for six months.³

NOTE.—The validity of such an acceptance must of course be subject to the provisions of the Stamp Acts.

(5.) The acceptance of some one or more joint drawees, but not of all.

ILLUSTRATION.

Bill drawn on B., X., and Y. B. accepts. X. and Y. refuse to accept. This is a qualified acceptance.⁴

NOTE.—German Exchange Law, Art. 22, admits a partial acceptance, but makes any other qualification a refusal to accept. French Code, Art. 124, prohibits a conditional, but admits a partial acceptance, directing the holder to protest the bill as to the residue. England and the United States seem to be the only countries that allow of conditional acceptance. Cf. Art. 10; and Art. 271.

Art. 40. A Qualified acceptance is valid as re- Effect of
gards the acceptor and all subsequent parties, and qualified
as regards prior parties who assent thereto. A accept-
prior party (drawer or indorser) who does not autho- ance.
rize or assent to it is (probably) discharged.⁵

NOTE.—In *Rowe v. Young*,⁶ the judges differed in opinion as to the effect of taking a qualified acceptance without the consent or subsequent assent of prior parties, some thinking that prior parties would only be discharged if it could be shown that their rights were injuriously affected, others thinking that they would be *ipso facto* discharged. See by way of analogy Arts. 248, 249 on

¹ Cf. *Halstead v. Skelton* (1843) 5 Q. B. 86, Ex. Ch.

² *Russell v. Phillips* (1850), 14 Q. B. 891; Cf. *Fanshawe v. Peat* (1857), 26 L. J. Ex. 314.

³ *Id.*

⁴ *Byles*, p. 186, citing *Marius* 16; New York Draft Code, § 1784; *Nouguier*, § 451.

⁵ *Rowe v. Young* (1820), 2 Bligh. H. L. 391, third question to judges, and answers thereto. Cf. *Whitehead v. Walker* (1842), 9 M. & W. at 509.

Effect of
qualified
accept-
ance.

Alterations. Suppose the holder takes a qualified acceptance. Al admit that he must give notice to the drawer. If the drawer, or receipt of the notice assent, or, perhaps, do not express his dissent well and good. But is he not entitled to say, "You have altered my contract behind my back, I am no longer a party to it. *Non hæc in fœdora veni.* If the drawee do not in terms assent to my order, I am entitled to notice of dishonour, and notice of dishonour includes a demand of payment. This you cannot give." Can the holder reply, "The drawee is to some extent your agent, and the altered contract was entered into for your benefit?" Surely not.

Acceptance for Honour suprà Protest.

What bills.

Art. 41. A Bill of Exchange may be accepted for honour *suprà protest*, which has been—

- (1.) Dishonoured by non-acceptance;¹ or
- (2.) Protested for better security after acceptance.

Who may
accept for
honour.

Art. 42. Any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept such bill after protest, for the honour of the drawer or an indorser.⁴

ILLUSTRATION.

Bill dishonoured by non-acceptance. The drawee, or a stranger to the bill, may accept it for the honour of the drawer or an indorser.

NOTE.—In France and Germany the rule is that if two or more persons are willing to accept *suprà protest*, the holder must take the acceptance of the person whose payment will enure for the benefit of most parties.⁵ Beawes, No. 42, says that if a bill be accepted for the honour of an indorser, there may be another acceptance *suprà protest* for the honour of any party prior to him. This is not resorted to in practice; but if the acceptor *suprà protest* fails before the maturity of the bill, a second acceptance *suprà protest* is sometimes obtained.

¹ *Mutford v. Walcot* (1698), 1 Ld. Raym. 575; French Code, Art. 126 German Exchange Law, Art. 56.

² *Ex parte Wackerbath* (1800), 5 Ves. Jr. 574; Cf. Art. 183.

³ *Byles*, p. 266; *Chitty*, pp. 243, 244; *Story*; *Beawes*, No. 37.

⁴ *Hoare v. Cazenove* (1812), 16 East, 391; French Code, Art. 125; German Exchange Law, Art. 56—61.

⁵ *Beawes*, No. 32; *Nouguier*, § 574.

⁶ *Nouguier*, § 575; German Exchange Law, Art. 56.

Art. 43. It is optional with the holder to take or Holder's option. refuse an acceptance *suprà protest*.¹

Exception.—When the drawer of a foreign bill gives a reference to a Case of need, and by the law of the place where such bill is drawn presentment to the Case of need is obligatory, the holder (perhaps) cannot refuse to take the acceptance *suprà protest* of such Case of need.²

NOTE.—By German Exchange Law, Art. 57, if the bill contain a reference to a Case of need, the holder is bound to present the bill to him ; in other cases he may refuse acceptance *suprà protest*. Under French Code, Art. 126, the holder, perhaps, cannot in any case refuse.

Art. 44. An acceptance *suprà protest* may be given Time of acceptance for honour. at any time after the bill has been protested and before it is over-due.

Explanation.—A bill noted for protest is deemed to be protested.³

ILLUSTRATION.

Bill payable one month after sight is protested for non-acceptance. It may be accepted *suprà protest* eight days afterwards.⁴

NOTE.—In France, perhaps, the acceptance for honour must be given at the time the bill is protested : *Nouguier*, § 570.

Art. 45. An acceptance *suprà protest* must be in Form of acceptance for honour. writing on the bill, signed by the acceptor, and duly attested by a notarial act of honour.⁵

ILLUSTRATION.

The acceptor for honour writes on the bill, "Accepted *suprà protest* for the honour of C., and will be paid at my office if regularly presented when due ;" or, "Accepted under protest for the honour of A., and will be paid for his account if refused when due and regularly protested."⁶ Or simply, "Accepted, S. P." He then signs.

¹ *Bytes*, p. 266 ; *Chitty*, pp. 243, 244 ; *Story* ; *Beaves*, No. 37. Cases cited by these authors do not seem in point.

² Cf. Art. 184.

³ *Geralopulo v. Wieler* (1851), 20 L. J. C. P. 105.

⁴ Cf. *Williams v. Germaine* (1827), 7 B. & C. 468.

⁵ *Bytes*, p. 265 ; *Chitty*, p. 244 ; *Story* ; *Brooks' Notary*, 4 ed., p. 93.

⁶ Cf. *Mitchell v. Baring* (1829), 10 B. & C. 4.

Form of acceptance for honour. NOTE.—By German Exchange Law, Art. 58, the acceptance *suprà protest* is to be recorded in an appendix to the protest. By French Code, Art. 126, the acceptance *suprà protest* must be recorded in the protest, and the protest signed by the acceptor: Cf. "*Nouguier*, § 570." In England the notarial act, in this case called an "act of honour," is appended to the protest. A "notarial act" means "any instrument, indorsement, note, or entry made or signed by a notary public in the execution of the duties of his office."¹ It was formerly the practice for the acceptor *suprà protest* to appear personally before the notary with witnesses, to declare for whose honour he accepted. Modern custom no longer requires this.² A clerk is usually sent to the notary.

Partial acceptance for honour. Art. 46. There may be an acceptance *suprà protest* for part of the amount of the bill.³

Presumption. Art. 47. An acceptance *suprà protest* should state for whose honour it is given. If it do not, it is deemed to be given for the honour of the drawer.⁴

Effect of acceptance for honour. Art. 48. An acceptance *suprà protest* (probably) suspends until non-payment the holder's right of action, which arises on non-acceptance.⁵

NOTE.—Query, if in some cases the right of action be not taken away and not merely suspended, but the point has not been judicially discussed. On payment *suprà protest*, or dishonour at maturity, new rights and obligations arise: Cf. Art. 244. By French Code, Art. 128, the holder's rights against the drawer and indorsers are not affected by an acceptance *suprà protest*; but then the holder has no right of action until the maturity of the bill: he can only demand security: Cf. Art. 157. By German Exchange Law, Art. 61, the holder is entitled to demand security from parties prior to the party for whose honour the acceptance is given.

Signature.

Sufficiency in form. Art. 49. "Signature" means the writing of a person's name on a bill, in order to authenticate and give effect to some contract thereon. (Cf. Art. 52.)

¹ Indian Stamp Act, 1870, § 3.

² *Brooks' Notary*, 4 ed., p. 94.

³ *Id.*, p. 97.

⁴ *Chitty*, p. 243; *Daniell*, § 525; German Exchange Law, Art. 59; *Nouguier*, § 578.

⁵ Cf. *Williams v. Germaine* (1827), 7 B. & C. at 477; *Chitty*, p. 238.

Explanation.—A signature sufficient in point of form in the case of an ordinary contract is (perhaps) sufficient in the case of a bill. Sufficiency
in form.

ILLUSTRATIONS.

1. A signature in pencil is sufficient.¹
2. A lithographed signature, or a signature impressed with a stamp, is (perhaps) sufficient.²
3. A note in the form, "I, J. B., promise, *et cet.*," is sufficiently signed, though the usual form is, "I promise, *et cet.*," signed J. B.³
4. Bill drawn in the form, "Mr. A. requests Messrs. B. & Co., *et cet.*." This is (probably) a sufficient signature by the drawer.⁴
5. A bill under seal, without signature, is not sufficiently signed, unless the contrary be provided by statute.⁵
6. A signature made by another person, but attested by mark, is sufficient.⁶

NOTE.—When a statute requires a document to be signed, a mere mark,⁷ or initials,⁸ or a stamp,⁹ if intended as signatures, are sufficient; and it is immaterial in what part of the document the name is introduced, provided it govern the whole. But legal analogies must be applied with caution to bills which are the creation of custom, and where it is of the utmost importance that a clear title should appear on the face of the instrument. In America the rule is lax. A person who signed by initials was held liable as indorser of a cheque,¹⁰ and the same was held as to a person who indorsed by mark, viz., by writing the figures 1, 2, 3.¹¹ By German Exchange Law, Art. 94, signature by mark is insufficient unless made before a notary.

Art. 50. A corporation is bound by its signature to a bill, without the addition of the corporate seal.¹² Signature
of corpora-
tion or
company.

¹ *Geary v. Physic* (1826), 5 B. & C. 234.

² Cf. *Ex parte Birmingham Banking Co.* (1868), 3 L. R. Ch. at 653, 654.

³ *Taylor v. Dobbin* (1719), 1 Stra. 399.

⁴ Cf. *Ruff v. Webb* (1794), 1 Esp. 129. As to documents other than bills, *Caton v. Caton* (1867), 2 L. R. H. L. at 143.

⁵ *Bytes*, p. 68; *Story*, § 61; Cf. Art. 278. Note of Corporation. As to a kind of bond formerly known as a "single bill" or "bill under seal" and sometimes confused with a bill of exchange, cf. *Bank of England v. Anderson* (1837), 3 Bing. N. C. at 621 and 658.

⁶ *George v. Surrey* (1830), M. & M. 516.

⁷ *Baker v. Dening* (1838), 8 A. & E. 94.

⁸ *Caton v. Caton* (1867), 2 L. R. H. L. 143.

⁹ *Saunderson v. Jackson* (1800), 2 B. & P. 238.

¹⁰ *Merchants' Bank v. Spicer* (1831), 6 Wend. 443.

¹¹ *Brown v. Butchers' Bank* (1844), 6 Hill, 443.

¹² Cf. *Crouch v. Crédit Foncier* (1873), 8 L. R. Q. B. at 382.

Signature of corporation or company. NOTE.—This is one of the exceptions to the general rule, that a corporation can only bind itself by an instrument under seal: *Grant on Corp.*, p. 61. The usual form of signature for a corporation is a procuration signature. Cf. Art. 278. Note under Seal.

Explanation.—A company, under the Companies Acts, 1862 and 1867 (having the requisite capacity),¹ is deemed to have made, accepted, or indorsed a bill which is either—

(a) “Made, accepted, or indorsed in the name of the company;” or

(b) “Made, accepted, or indorsed by, or on behalf, or on account of the company,”

“by any person acting under the authority of the company.”²

ILLUSTRATION.

1. Note in the form, “We jointly promise to pay, *et cet.*, on account of the X. Company, Limited.” (Signed)

“J. B., }
“J. S., } Directors.”

This is the note of the company and not of the directors personally.³

NOTE.—Cf. Art. 37, Expl. 3, and Art. 77, for further illustrations. Compare the language of the present Act, 25 & 26 Vict. c. 89, § 47, quoted above, with the previous Companies Act, 19 & 20 Vict. c. 47, § 43. Clause (b) is new. In order to determine whether a company or other corporation is liable on a bill, three questions must be asked: 1. Has the company the requisite capacity to bind itself by a bill? 2. Is the signature on the bill sufficient in form to bind the company? 3. Was the signature placed there by a person having authority to sign bills for the company? It is immaterial that a person who acts within the scope of his authority in signing bills exceeds or contravenes private instructions.⁴ See also Art. 75, and note.

Liquidators.

Art. 51. When a company, under the Companies

¹ Art. 67; and *Bolognesi's case* (1870), 5 L. R. Ch. Ap. 567.

² 25 & 26 Vict. c. 89, § 47; Cf. *Re Land Credit Co.* (1869), 4 L. R. Ch. Ap. 460.

³ *Lindus v. Melrose* (1858), 3 H. & N. 177, Ex. Ch.; approved, *Dutton v. Marsh* (1871), 6 L. R. Q. B. 361.

⁴ *Re Land Credit Co.*, *ante*. As to the powers of *de facto* directors, Cf. *Mahony v. East Holyford Co.* (1875), 7 L. R. H. of L. 869.

Acts, is in liquidation, and two or more liquidators ^{Liquidators.} are appointed, a bill must be signed by at least two liquidators in order to bind the company.¹

Art. 52. When a person is induced by fraud to ^{Unintentional} sign a bill under the belief that he is signing a ^{signature.} wholly different instrument, his signature is null and void, provided that in so signing he acted without negligence.²

ILLUSTRATIONS.

1. D., an old man with enfeebled sight, is induced to sign his name on the back of a bill, by being told that it is a railway guarantee which he had promised to sign. The bill is negotiated to a *bonâ fide* holder. D. is not liable as an indorser.³

2. B. is induced, by fraud, to sign a negotiable note as maker, believing it to be a non-negotiable note for a less sum. It is negotiated to a *bonâ fide* holder. Negligence is negatived. B. (probably) is not liable.⁴

NOTE.—Frauds of this sort are more common in America, owing to the absence of stamp laws. A man's signature is obtained for some pretended purpose, and then a promissory note is over-written.

Delivery.

Art. 53. Delivery is the necessary complement of ^{Delivery necessary.} every contract on a bill, be it drawing, making, acceptance, or indorsement; and until delivery be made the contract is inchoate and revocable.⁵

Explanation.—Delivery means transfer of possession, actual or constructive, from the obligor to the obligee.

ILLUSTRATIONS.

1. B., who is indebted to C., makes a note for the amount pay-

¹ *Ex parte Agra Bank* (1871), 6 L. R. Ch. 206.

² *Foster v. Mackinnon* (1869), 4 L. R. C. P. 704; *Briggs v. Ewart* (1873), 11 Amer. R. 445.

³ *Id.*; *Cf. Société Générale v. Met. Bank* (1873), 27 L. T. N. S. 849.

⁴ *Griffiths v. Kellog* (1876), 20 Amer. R. 48.

⁵ *Cf. Abrey v. Cruz* (1869), 5 L. R. C. P. at 42.

Delivery necessary. able to C. B. dies, and the note is afterwards found among his papers. C. has no right to this note, and if it be given to him he cannot enforce it.¹

2. B. makes a note in favour of C., and delivers it to a stakeholder (*e.g.*, trustee under composition deed). C. thereby acquires no property in the note.²

3. C., the holder of a bill, specially indorses it to D.; C. transmits it by post to X., his own agent. X. informs D. that he has received the bill, but does not give it him or undertake to hold it on his account. C. can revoke the transaction and cancel his indorsement to D.³

4. C., the holder of a bill, specially indorses it to D., and incloses it in a letter addressed to D. The letter, which is put in the office letter-box, is stolen by a clerk of C.'s, who forges D.'s indorsement and negotiates the bill. The property in the bill remains in C.⁴

5. By the regulations of the English Post-office, a letter once posted cannot be reclaimed. If, then, the indorser of a bill authorize the indorser to transmit it to him by post, the property in the bill passes to the indorsee, and the indorsement becomes complete as soon as the letter which contains the bill is posted.⁵

6. C., the holder of a note payable to bearer, wishes to remit money to D. For safety of transmission he cuts the note in half and posts one half to D. Before he posts the second half he changes his mind, and writes to D. demanding back the half he has sent. He is entitled to do so, for a partial delivery is ineffectual.⁶

7. A bill is left with the drawee for acceptance. The drawee writes an acceptance on it. The next day the holder calls for the bill: he is merely informed that it is mislaid, and is requested to call the next day. In the meantime the drawee hears that the drawer has failed. He accordingly cancels his acceptance, and the

¹ Cf. *Bromage v. Lloyd* (1847), 1 Exch. 32.

² Cf. *Latter v. White* (1872), 5 L. R. H. of L. 578.

³ *Brind v. Hampshire* (1836), 1 M. & W. 365; *Muller v. Pondir* (1873), 55 New York R. 325.

⁴ Cf. *Arnold v. Cheque Bank* (1876), 1 L. R. C. P. D. at 584.

⁵ *Ex parte Cote* (1873), 9 L. R. Ch. 27; *Sichel v. Birch* (1864), 2 H. & C. 956. Query, if there be no authority to send by post?

⁶ *Smith v. Mundy* (1860), 29 L. J. Q. B. 172; Cf. *Redmayne v. Burton* (1860), 2 L. T. N. S. 324.

next day delivers the dishonoured bill back to the holder. This is Delivery
no acceptance; the drawee was entitled to cancel it.¹ necessary.

8. C. & Co. are indebted to D. X., who is a partner in C. & Co., and also agent for D., writes C. & Co.'s indorsement on a bill held by the firm, and puts the bill with some other papers of D., of which he has the custody. This is a valid indorsement by C. & Co., and the property in the bill passes to D.²

NOTE.—In Illustration 8 delivery is effected by transfer of the constructive possession, *i.e.*, the actual possession remains unaltered, but it is continued in a different right. A person has the constructive possession of a thing when it is in the actual possession of his servant or agent on his behalf; therefore delivery may be effected without change of actual possession, in three cases: 1. A bill is held by C. on his own account: he subsequently holds it as agent for D. 2. A bill is held by C.'s agent, who subsequently attorns to D., and holds it as his agent. 3. A bill is held by D. as agent for C.; he subsequently holds it on his own account.³ There is this difference between an acceptance and the other contracts on a bill. The drawee has no property in the bill, therefore an attornment to the holder will be presumed on slight evidence, perhaps the mere intimation by the drawee of the fact that the acceptance has been written.⁴

Art. 54. As between immediate parties (Art. 88), Delivery,
delivery in order to be effectual must be made by the by whom.
obligor or his agent.

ILLUSTRATIONS.

1. C., the holder of a bill, specially indorses it to D. He dies before delivering it, but his executor subsequently hands the bill to D. The indorsement to D. is invalid, for an executor is not the agent of his testator. D. cannot sue on the bill.⁵

2. X., by means of a false pretence, or a promise or condition which he does not fulfil, procures A. to draw a cheque in favour of C. X. delivers it to C., who receives it *bonâ fide* and for value.

¹ *Bank of Van Dieman's Land v. Victoria Bank* (1871), 3 L. R. P. C. 526.

² *Lysaght v. Bryant* (1850), 9 C. B. 46.

³ Cf. in illustration *Field v. Carr* (1828), 2 M. & P. 46; *Bosanquet v. Forster* (1841), 9 C. & P. 659; *Belcher v. Campbell* (1845), 8 Q. B. 1. Cf. also *Ancona v. Marks* (1862), 31 L. J. Ex. 163, ratification of delivery; *Ex parte Cole* (1873), 9 L. R. Ch. 27, delivery by mistake and revocation by consent.

⁴ Cf. *Coz v. Troy* (1822), 5 B. & Ald. 474; approved *Chapman v. Cottrell* (1865), 3 H. & C. 857; Art. 32 n., Foreign Laws.

⁵ *Bromage v. Lloyd* (1847), 1 Exch. 32.

Delivery, C. acquires a good title, and can sue A., for X. is ostensibly A.'s agent.¹
by whom.

3. A. draws a cheque payable to bearer, intending to pay it to X. It is stolen from his desk before he issues it, and is subsequently negotiated to C., who takes it for value and without notice. C. acquires a good title and can sue A.²

Art. 55. As between immediate parties (Art. 88), a bill may be shown to have been delivered conditionally, or for a special purpose only, and not for the purpose of transferring the entire property therein.³
Condi-
tional de-
livery.

ILLUSTRATIONS.

1. B. makes a note payable to C., who sues him on it. B. can defend himself by showing that the note was delivered to C. on condition that it was only to operate if he should procure B. to be restored to a certain office, and that B. was not so restored.⁴

2. C., the holder of a bill, indorses it in blank and hands it to D. on the express condition that he shall forthwith retire certain other bills therewith. He does not do so. D. cannot sue C., and if he sue the acceptor, the latter may set up the *jus tertii*.⁵

3. C., the holder of a bill, indorses it specially to D. in order that he may get it discounted for him. D., in breach of trust, negotiates the bill to E. If E. take the bill *bonâ fide* and for value, he acquires a good title, and can sue all the parties thereto. If he do not so take it, he cannot sue C.; and if he sue the acceptor, the latter may set up that the bill is C.'s;⁶ further, C. can bring an action against E. to recover the bill or the proceeds.⁷

4. C., the payee of a bill, indorses it to D. D. sues C. as indorser. C. may show that he and D. were jointly interested in the bill, and that he indorsed to the latter to collect on joint account.⁸

¹ Cf. *Watson v. Russel* (1862), 3 B. & S. 34; affirmed 5 B. & S. 968, Ex. Ch.

² *Ingham v. Primrose* (1859), 7 C. B. N. S. at 85; *Kinyon v. Wohlford* (1872), 10 Amer. R. 165.

³ Cf. *Druiff v. Parker* (1868), 5 L. R. Eq. at 137; *Salmon v. Webb* (1852), 3 H. L. Ca. at 518; *Benton v. Martin* (1873), 52 New York at 574.

⁴ *Jefferies v. Austin* (1725), 1 Stra. 674.

⁵ *Bell v. Lord Ingestre* (1848), 12 Q. B. 317; Cf. *Seligman v. Huth* (1877), 37 L. T. 488.

⁶ *Lloyd v. Howard* (1850), 15 Q. B. 995; and Cf. *Barber v. Richards* (1851), 6 Exch. 63.

⁷ *Goggerly v. Cuthbert* (1806), 2 N. R. 170; Cf. *Alsager v. Close* (1842), 10 M. & W. 576; *Mutty Loll v. Dent* (1853), 8 Moore. P. C. 319.

⁸ *Denton v. Peters* (1870), 5 L. R. Q. B. 475.

5. B. makes a note for 100*l.* payable to C. or order. C. sues B. Evidence is admissible to show that the note was given as collateral security for a running account, and what the state of that account is.¹

NOTE.—Compare this Art. with the next. *Escrow*.—A deed delivered conditionally is called an escrow, and by analogy the term is sometimes applied to bills. There is, however, this distinction: a deed cannot be delivered conditionally to the obligee, the delivery must be to a third party.² When a bill is delivered conditionally or for a special purpose, the relations between the person who so delivers it and the person to whom it is delivered are substantially those of principal and agent.³ The person to whom it is delivered belongs, perhaps, to the class of agents called bailees;⁴ at least, if the terms bailor and bailee be used in the extensive sense given to them by Story, in his work on Bailments.

Construction.

Art. 56. The contracts on a bill, as interpreted by the Law Merchant, are contracts in writing. Extrinsic evidence is not admissible to contradict or vary their effect.⁵

Explanation.—Evidence is admissible to impeach the consideration between immediate parties.⁶

Exception.—The obligations of the parties to a bill may be released verbally and without consideration: Art. 239.

ILLUSTRATIONS.

1. The mere signature of the holder on the back of a bill (indorsement in blank) is a contract in writing to this effect: 1. I hereby assign this bill to bearer. 2. I hereby undertake that if the bearer duly present this bill, and it is not honoured, I, on receiving due notice, will indemnify him.⁷

¹ Cf. *Ex parte Twogood* (1812), 19 Ves. 227; *Re Boys* (1870), 10 L. R. Eq. 467, and Art. 84.

² Per Lord Denman, in *Bell v. Ingestre* (1848), 12 Q. B. at 319.

³ *Maguire v. Dodd* (1859), 9 Ir. Ch. 452.

⁴ Cf. *Lloyd v. Howard* (1850), 15 Q. B. at 1000, Erle, J.; *Manley v. Boycot* (1853), 2 E. & B. at 56, Ld. Campbell.

⁵ *Abrey v. Cruz* (1869), 5 L. R. C. P. 37.

⁶ *Id.* at 45. See Art. 14, and Chap. III.

⁷ Cf. *Suse v. Pompe* (1861), 30 L. J. C. P. 75, at 80.

Bills are
contracts
in writing.

2. A. draws a bill on B. in favour of C., and issues it to the latter, who gives value. A. thereby incurs the ordinary obligations of a drawer. If B. dishonour the bill and C. sue A., oral evidence cannot be admitted to show that A.'s liability as drawer was conditional on the performance of certain acts by C., and that C. had not done them.¹

3. Bill drawn in ordinary form. Action by payee against acceptor. Evidence is not admissible to show that it was intended to be paid out of a particular fund which is no longer available.²

4. Bill drawn conditionally (Art. 10). Evidence is not admissible to show that the condition has been performed, and that therefore the bill is no longer conditional and invalid. A bill must be valid *ab initio*.³

5. B. makes a note payable to C. one month after date. C. sues B. Extrinsic evidence is not admissible to show that it was intended to be payable two months after date.⁴

6. B. makes a note in favour of C. for 100*l*. C. sues B. Extrinsic evidence is not admissible to show that the sum agreed to be paid was 80*l*.⁵

7. Bill in the ordinary form accepted by B. and held by D. Evidence is admissible to show that D., after the bill was indorsed to him, was informed that B. had accepted the bill for the accommodation of X., and that D. gave time to X., the principal debtor, without the consent of B. the surety, thereby discharging the latter.⁶

NOTE.—This Art. is not inconsistent with Art. 55. The distinction is this. Evidence is admissible to show that what purports to be a complete contract in writing is merely an inchoate transaction; but evidence is not admissible to vary the terms of an existing and complete contract in writing. The difficulty is to determine within which class a given transaction falls.⁷ As between immediate parties a contemporaneous writing,⁸ or a subsequent written

¹ *Abrey v. Cruz* (1869), 5 L. R. C. P. 37; Cf. Art. 239.

² *Campbell v. Hodgson* (1819), Gow. 74; Cf. *Richards v. Richards* (1831), 2 B. & Ad. at 454, 455.

³ *Colchun v. Cooke* (1793), Willes, 397.

⁴ Cf. *Drain v. Harvey* (1855), 17 C. B. 257.

⁵ Cf. *Besant v. Cross* (1851), 10 C. B. 895.

⁶ *Overend v. Oriental Financ. Corp.* (1874), 7 L. R. H. L. 348; *Hubbard v. Gurney* (1876), 64 New York R. 457; Cf. Art. 245.

⁷ E.g., compare the facts in *Abrey v. Cruz*, *ante*, with those in *Holmes v. Kidd* (1858), 3 H. & N. 891, Ex. Ch.

⁸ Cf. *Brown v. Langley* (1842), 4 M. & Gr. 466; *Salmon v. Webb* (1852), 3 H. L. Ca. 510; *Maillard v. Page* (1870), 5 L. R. Ex. 312.

agreement,¹ may control the effect of a bill, subject to the same conditions that would be requisite in the case of an ordinary contract; but the mere fact that a bill refers to a collateral writing or agreement which is conditional in its terms, will not vitiate the bill in the hands of a person who has no notice of its contents.² See English and American cases reviewed: *Taylor v. Curry* (1871), 109 Massachussets, 36. Cf. also Art. 9 and Art. 14.

Art. 57. Questions relating to bills, when not concluded by authority, are to be determined by the usage of trade, if such there be.³

Explanation 1.—The existence, nature, and scope of a given usage is a question of fact.⁴

Explanation 2.—A general usage once incorporated into a judicial decision becomes part of the Law Merchant, and evidence of custom to contradict it is inadmissible.⁵

ILLUSTRATIONS.

1. Bill indorsed "Pay C.," omitting the words "or order." The Court of King's Bench having decided that such bills are still negotiable by indorsement, evidence that by custom they are not negotiable is inadmissible.⁶

2. If a foreign bill be dishonoured, the indorser is by the Law Merchant liable for the re-exchange. Evidence that by local custom the holder is entitled either to the re-exchange or to the amount he gave for the bill, at his option, is inadmissible.⁷

3. Action by customer against banker for not honouring a cheque. The banker may show that the cheque was marked "post dated," and that it is the custom of bankers in the City of London not to honour cheques which are marked post dated.⁸

NOTE.—*Goodwin v. Roberts* (1875),⁹ is important as showing that the novelty of a general usage is no objection to its being incorporated into the Law Merchant, thereby to some extent over-

¹ *McManus v. Bark* (1870), 5 L. R. Ex. 65.

² *Jury v. Baker* (1858), E. B. & E. 459.

³ *Goodwin v. Roberts* (1875), 10 L. R. Ex. 337, Ex. Ch.

⁴ *Id.*

⁵ *Id.* at 357; and Cf. *Brandao v. Barnett* (1846), 3 C. B. at 530, H. L.

⁶ *Edie v. East India Co.* (1761), 2 Burr. 1216.

⁷ *Suse v. Pompe* (1860), 30 L. J. C. P. 75.

⁸ *Emmanuel v. Roberts* (1868), 9 B. & S. 121.

⁹ 10 L. R. Ex. 337. Affirmed by House of Lords, 1 L. R. Ap. Ca. 476.

Custom of trade. ruling *Crouch v. Crédit Foncier* (1873), 8 L. R. Q. B. at 386. A particular or local usage must, it is conceived, be proved *de novo* each time. When both authority and custom are silent, foreign law is usually resorted to as a guide. See *Intro.*, p. viii.

Construed
favourably

Art. 58. When the terms of a bill are ambiguous, the construction most favourable to the full validity of the instrument must be followed.¹

ILLUSTRATIONS.

1. An acceptance will, if possible, be construed as absolute, not qualified, and a mere memorandum, inconsistent with such construction, is to be rejected as being no part of the acceptance.²

2. The address to the drawee will be read in with the acceptance, *ut res magis valeat*.³

3. Note in the form, "I promise not to pay." The word "not" will be rejected.⁴

4. Indorsement in the form, "Pay B., or order, value in account with X." This is not to be construed as restrictive.⁵

5. Holder may treat an ambiguous instrument either as a bill or as a note at option.⁶

6. Instrument invalid as a bill for not designating a drawee. If it be accepted, the holder may treat it as a note.⁷

Conflict of Laws.

Formal
requisites.

Art. 59. The validity of a bill as regards requisites in form is (generally) determined by the law of the place of issue, and the formal validity of supervening contracts, such as acceptance or indorsement, is (generally) determined by the law of the place where such contract is made.⁸

¹ *Mare v. Charles* (1856), 5 E. & B. at 981, *Ld. Campbell*.

² *Fanshawe v. Peat* (1857), 26 L. J. Ex. 314; and *Cf. Stone v. Metcalfe* (1815), 4 Camp. 217; *Fitch v. Jones* (1855), 5 E. & B. at 246.

³ *Mare v. Charles* (1856), 5 E. & B. 978.

⁴ *Russel v. Lunsdale*, cited *Bayley on Bills*, 6; and 2 *Atkyns*, 32.

⁵ *Murrow v. Stuart* (1853), 8 Moore, P. C. at 276.

⁶ *Edis v. Bury* (1827), 6 B. & C. 433.

⁷ *Fielder v. Marshall* (1861), 30 L. J. C. P. 158; *Cf. Art.* 37 and 274.

⁸ *Cf. Guepratte v. Young* (1851), 4 De G. & S. 217; *German Exchange Law*, Art. 85; *Nouguier*, § 1417-1427.

ILLUSTRATIONS.

Formal
requisites.

1. By German law a bill need not express the value received. By French law it must. A bill drawn in Germany on Paris, expressing no value, is (probably) valid everywhere.

2. By the law of Illinois a verbal acceptance is valid. By the law of Missouri an acceptance must be in writing. A bill drawn in Illinois on St. Louis, in Missouri, payable there, is verbally accepted in Illinois. The acceptance is valid everywhere.¹

3. By French law a bill must not be drawn and payable in the same place. A bill, issued in France, is both drawn and payable in Calais. It is indorsed and sued on in England. It is (probably) invalid.²

Exception.—When a bill drawn and payable in one country is negotiated in another, it is sufficient if the negotiation be valid in point of form according to the law of the former.³

ILLUSTRATIONS.

1. An English note, payable to bearer, is negotiated by delivery in a country where this mode of transfer is not recognised. The title passes by such delivery.⁴

2. Foreign bonds payable to bearer pass by delivery in England, though by English law such a bond would not be assignable.⁵

NOTE.—The contract is made where delivery is effected, not where the signature is affixed.⁶ A few foreign writers, among them Savigny, are of opinion that the maxim *locus regit actum* is purely facultative, never disabling. German Exchange Law, Art. 85, has gone a long way towards adopting this view. How far does the nationality of the parties enter into the question? Suppose an Englishman abroad draws a bill payable in England, sufficient in form according to English law, but defective according to the law of the place where it is drawn. Would it not be valid in England? But if a bill bearing date from London was issued in France, it would probably be sufficient if it conformed to the formal requisites of English law. At present the law must be regarded as unsettled.

¹ *Scudder v. Union Bank* (1875), 1 Otto, Sup. Ct. U.S. 406.

² Cf. *Bradlaugh v. De Rin* (1868), 3 L. R. C. P. at 542; *Bristow v. Sequeville* (1850), 5 Exch. 275; *sed contra Wynne v. Jackson* (1826), 2 Russ. 351 and 634.

³ Cf. *Bradlaugh v. De Rin* (1868), 3 L. R. C. P. at 542.

⁴ *De la Chaumette v. Bank of England* (1831), 2 B. & Ad. 385.

⁵ Cf. *Crouch v. Crédit Foncier* (1873), 8 L. R. Q. B. at 384.

⁶ *Chapman v. Cottrel* (1865), 34 L. J. Ex. 186.

Interpreta-
tion.

Art. 60. The interpretation of the drawing, indorsement or acceptance of a bill is (generally) determined by the law of the place where such contract is made.

ILLUSTRATIONS.

1. Action in England on a bill drawn and payable in France and there indorsed in blank. The effect of such indorsement is determined by French law, *i. e.*, it operates as a procuration.¹

2. A general acceptance given in Paris is (probably) to be interpreted according to French law.²

3. Note made and payable in Scotland, in the form, "Pay C. 100L.," without adding the words "or order." By Scotch law such a note is negotiable, though by English law it is not. C., in England, can negotiate it by indorsement.³

4. A bill drawn in Belgium on England is indorsed in France in blank. The indorsement is (perhaps) to be interpreted according to French law.⁴

Exception 1.—When an inland bill (Art. 24) is indorsed abroad, the indorsement is to be interpreted according to English law.⁵

Exception 2.—When a bill is drawn in one country and payable in another, expressions as to time and mode of payment are interpreted by the law of the place of payment.⁶

NOTE.—In *Bradlaugh v. De Rin* (1870), 5 L. R. C. P. 473, the Exchequer Chamber held that in the court below, and also in *Lebel v. Tucker*, and *Trimby v. Vignier*, the French law had been mistaken, and that as regards the point raised—*i. e.*, the right of an indorsee under a blank indorsement to sue in his own name—there was no conflict between the laws of France and England, but the principles laid down in those cases are not questioned.

¹ *Trimby v. Vignier* (1834), 1 Bing. N. C. 151.

² Cf. *Don v. Lipmann* (1837), 5 Cl. & F. at 12 and 13.

³ *Robertson v. Burdekin* (1843), 1 Ross, Scotch L. C. 824.

⁴ *Bradlaugh v. De Rin* (1868), 3 L. R. C. P. 538, per Bovill, C. J., and Willes, J., *contra* M. Smith, J., and *Everett v. Vendryes* (1859), 19 New York R. 436.

⁵ *Lebel v. Tucker* (1867), 3 L. R. Q. B. 77.

⁶ Arts. 13 and 20. See, too, the duties of the holder : Arts. 180, 202.

CHAPTER II.

CAPACITY AND AUTHORITY OF PARTIES TO A BILL.

Capacity.

Art. 61. Capacity to incur liability as a party to a bill is coextensive with capacity to trade and incur trade debts : ^{General rule.}

Capacity to indorse a bill for the purpose of authorizing the payment thereof, and transferring the property therein, is coextensive with capacity to sell or transfer personal property.

Explanation.—The incapacity of one or more of the parties to a bill does not diminish the liability of the other parties thereto.¹

NOTE.—Capacity must be distinguished from authority. Capacity is power to contract bestowed by law. Authority is power to contract bestowed by act of parties. Want of capacity is incurable. Want of authority may be cured by ratification. Capacity or no capacity is a question of law. Authority or no authority is usually a question of fact. Again, capacity to incur liability must be distinguished from capacity to transfer. An executed contract is often valid where an executory contract cannot be enforced : Cf. Arts. 111, 112.

Art. 62. A clergyman, though liable to penalties for trading, has full capacity to contract by bill.² ^{Clergyman.}

ILLUSTRATION.

B., a clergyman, makes a note in respect of a trade debt. The note is valid in the hands of a holder with notice.³

¹ *Grey v. Cooper* (1782), 3 Dougl. 65; French Code, Art. 114; German Exchange Law, Art. 3.

² Cf. 1 & 2 Vict. c. 106, §§ 29-31.

³ *Lewis v. Bright* (1855), 24 L. J. Q. B. 191.

Minor's
liability.

Art. 63. An infant incurs no liability by drawing, indorsing, or accepting a bill.¹

ILLUSTRATION.

B., an infant within three months of attaining his majority, accepts a bill payable six months after date. He ratifies the transaction on attaining his majority, and the bill is negotiated. B. is not liable on his acceptance.²

Exception.—An infant who represents himself to be of full age, and thereby induces any person to deal with him, is not allowed to set up his infancy as a defence to a liability thus incurred.³

NOTE.—If the consideration for a bill given by an infant be necessities supplied to him, he may be liable on the consideration, though not on the bill. The age at which infancy ceases differs much in different countries: *e. g.*, in India it is 18; in Germany, 23. In most continental countries a distinction is drawn between infant traders and non-traders; the former having full capacity.

Minor's
power to
transfer.

Art. 64. When a bill is payable to the order of an infant, his indorsement (probably) transfers the property therein.⁴

NOTE.—Cf. Art. 68. An infant's executed contracts are usually valid. As an infant may be an agent his indorsement in that character gives rise to no difficulty. In America it is not uncommon to get a bill made payable to the order of an infant clerk; his indorsement then operates as an indorsement *sans recours*, though without discrediting the bill.

Married
woman's
liability.

Art. 65. A married woman incurs no liability by drawing, indorsing, or accepting a bill.⁵

ILLUSTRATION.

A married woman, having no separate estate, makes a note, signing it "J. B., widow." She is not liable thereon.⁶

¹ Cf. Infants' Relief Act, 1874, 37 & 38 Vict. c. 62.

² *Ex parte Kibble* (1875), 10 L. R. Ch. 373.

³ *Ex parte Lynch* (1876), 2 L. R. Ch. D. 227.

⁴ Cf. *Lebel v. Tucker* (1867), 8 B. & S. at 833; *Nightingale v. Withington* (1818), 15 Mass. 272; *Grey v. Cooper* (1782), 3 Dougl. 65; Indian Draft Code, Art. 13.

⁵ *Cannam v. Farmer* (1849), 3 Exch. 698; Cf. *Coward v. Hughes* (1855), 1 K. & J. 443.

⁶ *Id.*

Exceptions.—1. Married woman having separate estate.¹ 2. Married woman being a sole trader in the City of London, if sued in the City Court.² 3. Married woman whose husband is *civilitur mortuus*, or an alien resident and domiciled abroad.³

Art. 66. When a bill is payable to the order of a married woman, she cannot by her indorsement transfer the property therein.⁴ Married woman's liability.
Transfer by married woman.

Exception 1.—Bill indorsed by married woman under such circumstances as would render her liable on her indorsement. (Art. 65.)

Exception 2.—Bill indorsed by married woman as agent for her husband.⁵

ILLUSTRATION.

A bill is payable to the "order of Mrs. C." With the consent of her husband she indorses it, signing her own name. The property in the bill passes by this indorsement.⁶

NOTE.—*Qu.* if in the case given, the husband would not be liable as indorser? See *Lindus v. Brailwell* (1848), 5 C. B. 583.

Art. 67. A corporation incurs no liability by drawing, indorsing, or accepting a bill, unless expressly or impliedly empowered by its Act of incorporation so to do.⁷ Liability of company or corporation.

ILLUSTRATIONS.

1. A joint stock company is incorporated for the purpose of forming a *société anonyme* abroad for the construction of Railways. The directors are empowered by the memorandum and articles of association to do whatever they may from time to time think incidental or conducive to the main object of the company. These

¹ *McHenry v. Davies* (1870), 10 L. R. Eq. 88; Cf. *London Chartered Bank v. Lampridre* (1873), 4 L. R. P. C. at 593-594.

² Cf. *Beard v. Webb* (1800), 2 B. & P. 93.

³ Cf. *Chitty on Contracts*, 10th ed., 174.

⁴ Cf. *Smith v. Marsack* (1848), 18 L. J. C. P. 65; and Art. 98.

⁵ *Prince v. Brunatle* (1835), 1 Bing. N. C. 435.

⁶ *Cotes v. Davis* (1808), 1 Camp. 485.

⁷ *Re Peruvian Railways Company* (1867), 2 L. R. Ch. 617.

Liability of terms cover the issue of bills, and such a company is liable on its company acceptance.¹
or corpora-
tion.

2. A Railway company, incorporated under an ordinary Railway Act, accepts bills which are negotiated. The company is not liable on its acceptances.²

NOTE.—In the case of a trading corporation the fact of incorporation for the purposes of trade would give capacity. In the case of non-trading corporations, the power must be expressly given, or there must be terms in the charter wide enough to include it. The Companies Act, 1862, § 47, does not confer capacity on all companies under that Act. It merely prescribes the mode in which such companies as have the requisite capacity are to exercise it.³ A mining company, a cemetery company, a salvage company, a gas company, an alkali works company, and a waterworks company have been held non-trading companies.⁴ Cf. Art. 78, as to non-trading partnerships. There is this distinction: A non-trading partnership can adopt a bill, but the bill of a company lacking capacity is, as regards the company, incurably bad; for a contract *ultra vires* of a corporation cannot be ratified. Query, if the rule as to drawing bills or making notes applies to cheques. Is a non-trading corporation liable on the instrument to the bearer of a dishonoured cheque which it has drawn, or is it only liable on the consideration to its immediate obligee? In America, the capacity of a corporation to bind itself by bill or note is coextensive with its capacity to contract.⁵ The capacity of a company ceases when a resolution to wind it up has been passed, although the resolution may not have been notified in the *Gazette*.⁶ See also Arts. 50, 51.

Power of
corpora-
tion to
transfer.

Art. 68. When a bill is payable to the order of a corporation, the indorsement of the corporation passes the property therein, though from want of capacity the corporation may not be liable as indorser.⁷

NOTE.—So, too, bankers may be justified in paying cheques out of the funds of a company, where clearly, by the form of the cheques, the company would not be liable as drawers if they had not been paid.⁸

¹ *Re Peruvian Railways Company* (1867), 2 L. R. Ch. 617.

² *Bateman v. Mid Wales Railway Company* (1866), 1 L. R. C. P. 499.

³ Cf. *Re Peruvian Railways Company*, *supra*.

⁴ *Bateman v. Mid Wales Railway* (1866), 1 L. R. C. P. 499 at 505.

⁵ *Parsons*, pp. 164, 165.

⁶ *Re Bolognesi* (1870), 5 L. R. Ch. 567.

⁷ *Smith v. Johnson* (1858), 3 H. & N. 222; Cf. Arts. 61, 80, 81.

⁸ *Mahoney v. East Holyford Company* (1875), 7 L. R. H. L. 869 and 884.

Statutory Disabilities of Bankers.

Art. 69. It is unlawful for a banker or banking company, other than the Bank of England—

Banker
and bank-
ing com-
pany.

(a) To issue in the United Kingdom any bill of exchange or promissory note which is expressed to be, or in legal effect is, payable to bearer on demand.¹

(b) To draw, accept, make, or issue in England or Wales, any bill of exchange or promissory note which is expressed to be, or in legal effect is, payable to bearer on demand, or to borrow, owe, or take up any sum or sums of money on such bill or note.²

Exception.—Banker or banking company lawfully issuing such bills or notes on May 6, 1844, but subject to certain conditions.³

NOTE.—Previous statutes define the bankers who in 1844 were lawfully issuing such bills and notes. The result seems to be that in London and within a circle of three miles round, the Bank of England has a monopoly; that beyond three and within 65 miles, the monopoly is shared with banks of less than ten persons established before 1844; that beyond the 65-mile limit, the monopoly is shared with all banks established before 1844 who have not since lost their privileges.⁴ The statutes now in force affecting bills by conferring exclusive banking privileges on the Bank of England are: 39 & 40 Geo. 3, c. 28, § 15; 7 Geo. 4, c. 46; 9 Geo. 4, c. 23; 3 & 4 Will. 4, c. 83, § 2; 3 & 4 Will. 4, c. 98; 7 & 8 Vict. c. 32; 8 & 9 Vict. c. 76, § 5; 17 & 18 Vict. c. 83, §§ 11 and 12; 25 & 26 Vict. c. 89, sched. III. Their provisions are inconsistent, but the later Acts do not expressly repeal the earlier ones, so the whole must be construed together. See also Art. 11 and 16.

Authority.

Art. 70. Subject to any exceptions mentioned in General rule.

¹ 7 & 8 Vict. c. 32, §§ 10 and 28 (Bank Charter Act, 1844), as explained by 17 & 18 Vict. c. 83, §§ 11 and 12.

² 7 & 8 Vict. c. 32, §§ 11 and 28, as explained by 17 & 18 Vict. c. 83, § 11.

³ *Id.*

⁴ *Lindley*, p. 191 n., and 1615—1617.

General
rule.

this chapter, bills are governed by the ordinary rules of law relating to principal and agent, and partnership.

Signature
potential
liability.

Art. 71. No person is liable as a party to a bill whose signature is not on it.¹

ILLUSTRATIONS.

1. A., who is agent for X., draws a bill in his own name upon B., payable to C. C. knows that A. is only an agent. A. alone is liable as drawer of this bill. X. is not.²

2. B. and X. are jointly indebted to C. B. alone makes a note in favour of C. for the amount of the debt. B. alone is liable as maker.³

3. A. draws a bill, signing it "J. A., agent." A. alone is liable as drawer. His principal is not.⁴

4. D. is the holder of a bill indorsed in blank by C. D. converts C.'s indorsement in blank into a special indorsement to E., and transfers the bill to the latter. D. is not liable as indorser.⁵

NOTE.—Bills form an exception to the ordinary rule that when a contract is made by an agent in his own name, evidence is admissible to charge the undisclosed principal, though not to discharge the agent. A person who has not signed, though not liable on the instrument, may of course be liable on the consideration: *e.g.*, X. would be so liable in Illust. 2. The distinction is this: In the one case the liability is transferable; in the other it is not; also the *onus probandi* is shifted.

Explanation 1.—The term person includes firm, company, and corporation.

ILLUSTRATIONS.

1. X., a partner in a firm who trade as "John Brown," makes a note for 100*l.* in respect of a partnership transaction, signing it as "Brown & Co." He has no authority from his partners to vary the firm style. The firm is not liable on this note, though B. individually is bound by it.⁶

¹ Cf. *Penn v. Harrison* (1790), 3 T. R. at 761; *Re Adanson Co.* (1874), 43 L. J. Ch. at 734, James, L. J.

² Cf. *Leadbitter v. Farrow* (1816), 5 M. & S. at 350; *Ex parte Rayner* (1868), 17 W. R. 64.

³ *Siffkin v. Walker* (1809), 2 Camp. 308.

⁴ *Pentz v. Stanton* (1833), 10 Wend. 271, New York.

⁵ *Vincent v. Horlock* (1808), 1 Camp. 442.

⁶ *Faith v. Richmond* (1840), 11 A. & E. 339; *Kirk v. Blurton* (1841), 9 M. & W. 284.

2. A. is a partner in the firm of "B. & Co." A., in respect of a partnership transaction, draws a bill in his individual name on "B. & Co." It is refused acceptance. A. alone is liable as drawer; his copartners are not.¹ Signature essential to liability.

NOTE.—If, in Illust. 1, B.'s partners had authorized the change of style, the altered style would have been *pro hac vice* the firm style, and binding on them. The firm, too, is bound if the variation in style be immaterial and unintentional.² And if there be not a distinct firm style, it seems a partner may sign the individual names of his copartners.³ Cf. Art. 50, Signature of Corporation.

Explanation 2.—A person is bound by his signature who signs a bill in an assumed or fictitious name.⁴

ILLUSTRATIONS.

1. John Smith carries on business under the name of "John Brown," or "Brown & Co.," or "The London Iron Company." John Smith is liable on a bill drawn, indorsed, or accepted by him in any of these names.⁵

2. A principal trades and carries on a business in the name of one of his agents (a clerk). He is liable on a bill accepted by the clerk in his own name in respect of that business, although the clerk in accepting it acted contrary to his private instructions.⁶

NOTE.—Cf. *Lindley*, p. 357. So, too, a firm may trade under its own name in one place, and under the name of one of the partners in another place. His name then becomes the firm name.⁷

Explanation 3.—The signature of a firm is deemed to be the signature of all persons who are partners

¹ *Nicholson v. Ricketts* (1860), 29 L. J. Q. B. at 65; *Re Adanson Co.* (1874), 43 L. J. Ch. 732, firm composed of four firms.

² *Forbes v. Marshall* (1855), 11 Exch. 166. As to an accidental misspelling, see *Leonard v. Wilson* (1834), 2 Cr. & M. 589; *Kirk v. Blurton* (1841), 9 M. & W. at 289.

³ *Norton v. Seymour* (1847), 16 L. J. C. P. 100.

⁴ Cf. *Lindus v. Bradwell* (1848), 5 C. B. at 591; Cf. Art. 37, Expl. 2; and *Trueman v. Loder* (1840), 11 A. & E. at 594.

⁵ Cf. *Wilde v. Keep* (1834), 6 C. & P. 235; *Forman v. Jacob* (1815), 1 Stark. 47.

⁶ *Edmunds v. Bushell* (1865), 1 L. R. Q. B. 96; Cf. *Conro v. Port Henry Iron Co.* (1851), 12 Barb. 27, New York.

⁷ Cf. *Alliance Bank v. Kearsley* (1871), 6 L. R. C. P. at 438, Willes, J.

Signature essential to liability. in the firm, whether working, dormant, or secret ;¹ or who, by holding themselves out as partners, are liable as such to third parties.²

ILLUSTRATIONS.

1. X. is a working partner in the firm of "B. & Co." He retires from the firm, but gives no notice of his retirement. He is liable on a bill accepted by the firm subsequent to his retirement.³

2. Two distinct firms, having one or more partners in common, carry on business under the same name. Each firm is liable on the acceptances of the other to a *bond fide* holder without notice.⁴

Hand that signs immaterial.

Art. 72. It is immaterial by whose hand a signature is made, provided there be authority to sign.⁵

ILLUSTRATION.

Bill payable to C.'s order, and indorsed in his name. It is proved that C.'s wife had authority to indorse bills for him, and that in this case C.'s name was written by his daughter, in the presence and by the direction of his wife. This is sufficient.⁶

NOTE.—By 19 & 20 Vict. c. 97, § 6, an acceptance must be "signed by the acceptor or some person duly authorized by him." In the case of a corporation, it is clear that the signature must be by the hand of an agent. Where an agent merely signs his principal's name, the question is, had he ostensible authority so to do ; but when the form of signature shows that the principal has not signed himself, *caveat emptor* : Cf. Art. 75.

Express authority not necessary.

Art. 73. An authority to sign bills on behalf of another may be either express (verbal or written), or implied from circumstances.⁷

ILLUSTRATIONS.

1. X., in B.'s presence, and with his assent, indorses a bill in B.'s name. This is to all intents and purposes an indorsement by B.⁸

¹ *Pooley v. Driver* (1876), 5 L. R. Ch. D. 458 ; *Lindley on Partnership*, 3rd ed., pp. 355—357.

² *Gurney v. Evans* (1858), 27 L. J. Ex. 166 ; *Lindley on Partnership*, 3rd ed., pp. 355—357.

³ *Lindley*, pp. 418—426.

⁴ *Lindley*, p. 357.

⁵ *Lord v. Hall* (1849), 8 C. B. 627.

⁶ *Id.*

⁷ *Prescott v. Flyn* (1832), 9 Bing. 19 ; Cf. Art. 81, Excep. 1.

⁸ Cf. *Lord v. Hall* (1849), 8 C. B. 627.

2. It is shown that X. is in the habit of accepting bills in B.'s Express name; that B. is aware of it, and duly honours such bills. This is evidence from which an authority to X. to accept bills may be sary. implied.¹

3. C. the holder of a bill payable to order transfers it for value to D. without indorsing it. This is not an authority to D. to indorse it in C.'s name.²

Explanation.—Where an express authority to the agent must be proved or is relied on, such authority is to be strictly construed.³

ILLUSTRATIONS.

1. An authority to draw bills does not include an authority to indorse them.⁴

2. An authority to an agent to receive payment from B. by drawing on him does not authorize the agent to draw a bill payable to his own order.⁵

3. An authority to draw cheques does not authorize drawing post-dated cheques, which are Bills of Exchange.⁶

Art. 74. A signature “per procuration,” or in other terms which denote that the signature of the principal is placed on the bill by the hand of an agent, operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature to the extent of the actual authority possessed by the agent.⁷

ILLUSTRATIONS.

1. B., who carries on business for himself, and is also in partnership with X., goes abroad; he gives X. an authority to accept bills in his name in respect of his private business. X. accepts a bill in B.'s name in respect of the partnership business, signing

¹ Cf. *Morris v. Bethell* (1869), 5 L. R. C. P. at 51.

² *Harrop v. Fisher* (1861), 30 L. J. C. P. 283.

³ *Attwood v. Munnings* (1827), 7 B. & C. 278; and Cf. *Fearn v. Filica* (1844), 7 M. & Gr. 513.

⁴ Cf. *Prescott v. Flynn* (1832), 9 Bing. at 22.

⁵ *Hogarth v. Wherley* (1875), 10 L. R. C. P. 530.

⁶ *Forster v. Mackreth* (1867), 2 L. R. Ex. 163.

⁷ Cf. *Charles v. Blackwell* (1877), 2 L. R. C. P. D. at 159—160, C. A.

Signature per proc. principal. "p.p. X. B." The bill is negotiated. B. is not liable on this acceptance.¹

2. By a resolution of the directors, the chairman of a company is authorized to accept bills drawn by A. against the deposit of securities. He accepts a bill drawn by A., signing per proc. the company, without requiring the deposit of security. The bill is negotiated to a *bonâ fide* holder. The company is liable.²

NOTE.—There is perhaps a disposition to narrow the rule in the case of corporations.³ In an Irish case⁴ a distinction is drawn between an acceptance signed "J. B., per proc. T. S.," and one signed "For J. B. T. S." The distinction does not seem founded on any very clear principle. The case can be supported on other grounds.

Signature per proc. agent. Art. 75. A person who, without authority, signs the name of another person to a bill, either simply or by a procuration signature, is (probably) not liable on the instrument.⁵

Exception.—If the alleged principal be a fictitious or non-existing person, the signer is liable.⁶

ILLUSTRATION.

A bill drawn on B. is held by C. X., without authority, accepts it for B., signing "B., per proc. X." X. is not liable as acceptor, though he may be liable to C. or a subsequent holder in an action for a false representation.⁷

NOTE.—In an action for false representation, under such circumstances, it lies on the holder to prove damage.⁸ The modern tendency is to restrict liability *ex delicto* to cases of intentional fraud. By German Exchange Law, Art. 95, a person who, without authority, signs a bill as agent for another is personally liable thereon. The Indian Draft Code adopts this rule. To sign the name of another person to a bill "per proc." without authority and

¹ *Attwood v. Munnings* (1827), 7 B. & C. 278; *Stagg v. Elliott* (1862), 12 C. B. N. S. 373.

² *Re Land Credit Co.* (1869), 4 L. R. Ch. 460; and Cf. *Ex parte Meredith* (1863), 32 L. J. Ch. 300.

³ *Re Land Credit Co.*, *supra*, at 468.

⁴ *O'Reilly v. Richardson* (1865), 17 Ir. Com. L. R. 74; but cf. *Balfour v. Ernest* (1859), 28 L. J. C. P. at 176.

⁵ *Polhill v. Walter* (1832), 3 B. & Ad. 114.

⁶ Cf. *Kelner v. Baxter* (1866), 2 L. R. C. P. 174; and Art. 72, Expl. 2.

⁷ *Polhill v. Walter* (1832), 3 B. & Ad. 114.

⁸ *Eastwood v. Bain* (1858), 3 H. & N. 738.

with intent to defraud was not a forgery at common law, but it is now made so by statute.¹

Art. 76. A person who signs a bill in a representative or official character, or who, in signing, describes himself as agent for a principal, whether named or not, is personally liable thereon, unless in express terms he repudiate such liability.²

Signature
per proc.
agent.
Signature
as agent or
represent-
ative.

ILLUSTRATIONS.

1. Money is lent to a parish. The churchwardens give a note for the amount, signing it "J. B., } Churchwardens." They are personally liable on the note as makers.³

2. B. by will directs his executor to carry on his business. He does so, and in the course of the business accepts bills, signing "J. S., executor of B." He is personally liable on these acceptances.⁴

3. D., the holder of a bill payable to his order, dies. X., his executor, indorses the bill away, signing the indorsement, "J. X., executor of D." X. is personally liable on this indorsement, unless he add some such words as "without recourse against me personally."⁵

4. Money is lent to the X. Company. A note for the amount is given in the form, "We promise to pay, *et cetera*," signed,

"J. B., }
"J. S., } Directors of the X. Company, Limited.
"J. T., Manager."

The persons who sign are personally liable as makers.⁶

5. Money is lent to the X. Railway Co. A note for the amount is given in the form, "I promise to pay, *et cetera*." (signed), "For the X. Railway Co. J. B., Secretary." J. B. is not personally liable.⁷

6. Note in the form, "We, the directors of the X. Company, Limited, *et cetera*." (signed by the directors), "J. B. J. S." In the

¹ 24 & 25 Vict. c. 98, § 24.

² *Leadbitter v. Farrow* (1816), 5 M. & S. 348.

³ *Reo v. Pettit* (1834), 1 A. & E. 196.

⁴ *Liverpool Bank v. Walker* (1859), 4 De G. & J. 24.

⁵ Cf. *Childs v. Monins* (1821), 2 B. & B. 460.

⁶ *Courtauld v. Saunders* (1867), 16 L. T. N. S. 562.

⁷ *Alexander v. Sizer* (1869), 4 L. R. Ex. 102; but see *Gray v. Raper* (1866), 1 L. R. C. P. 694.

Signature
as agent
or repre-
sentative.

corner of the note is the seal of the company, and the signature of an attesting witness. J. B. and J. S. are personally liable.¹

7. Bill specially indorsed to "C., agent." He indorses it away, signing "C., agent." C. is personally liable as indorser.²

NOTE.—For further illustrations, Cf. Art. 50 and Art. 37, Ex. 3. The terms agent, manager, &c., attached to a signature, are regarded as mere *designatio personæ*. The rule is applied with peculiar strictness to bills, because of the non-liability of the principal: Cf. Art. 71. It is often difficult to determine whether a given signature is the signature of the principal by the hand of an agent, or the signature of the agent naming a principal. The maxim *ut res magis valeat* governs the construction.

Trading
firm.

Art. 77. A partner in a trading firm has *prima facie* authority to bind the firm by drawing, indorsing, or accepting bills in the firm name for partnership purposes; and if the bill get into the hands of a holder for value without notice, the presumption of authority becomes absolute, and it is immaterial whether it were given for partnership purposes or not.³

ILLUSTRATIONS.

1. X., a partner in a trading firm, makes a note in the firm's name, payable to C., and gives it to him in payment of a private debt. It lies on C. to show that X. had authority from his copartners so to do.⁴

2. A. draws two bills on a firm in respect of one and the same debt. By mistake both bills are accepted. The bills are negotiated to *bonâ fide* holders. The firm is liable on both.⁵

3. A partner accepts in the firm name a bill drawn on the firm in respect of a debt partly due from the firm and partly due from himself alone. Fraud is negatived, but the holder knows the facts. The *pro tanto* liability of the firm on the instrument is doubtful.⁶

NOTE.—In Illust. 3, the safe plan is to sue on the consideration. This Art. and the next are merely deductions from the general rule

¹ *Dutton v. Marsh* (1871), 6 L. R. Q. B. 361.

² *Bartlett v. Hawley* (1876), 120 Mass. 92.

³ *Wiseman v. Easton* (1863), 8 L. T. N. S. 637; *Lindley*, p. 280.

⁴ Cf. *Levieson v. Lane* (1862), 32 L. J. C. P. 10.

⁵ *Davison v. Roberts* (1815), 3 Dow. 218; H. L.

⁶ *Ellston v. Deacon* (1866), 2 L. R. C. P. at 21.

that a partner has implied authority to do any act necessarily incidental to the proper conduct of the partnership business, and that there the presumption of authority ends. Trading firm.

Art. 78. A partner in a non-trading partnership has *prima facie* no authority to render his copartners liable by signing bills in the partnership name. The holder must show authority, actual or ostensible.¹ Non-trading firm.

Explanation.—Partnerships, such as professional partnerships (*e.g.*, solicitors),² mining partnerships,³ agricultural partnerships,⁴ and commission agencies⁵ have been held non-trading.

NOTE.—In America, physicians, tavern-keepers, tunnel-workers, and farmers, have been held non-traders.⁶ In *Harris v. Amery* (1865), 1 L. R. C. P. at 154, Willes, J., points out that the term “trade” is not coextensive with the term “business.” It does not seem to be decided how far the rule applies to cheques, as well as to bills and notes. The question cannot often arise, because opening an account in the firm name is evidence of actual authority. Note, that authority to draw cheques is not evidence of authority to draw bills, and a post-dated cheque is a bill.⁷

Art. 79. Where a bill is payable to the order of a firm, a partner who cannot by his indorsement render his copartners liable, may transfer the property therein by negotiating it in the firm name.⁸ Power to transfer.

ILLUSTRATIONS.

1. Bill specially indorsed to a non-trading partnership. One of the partners, without communicating with his copartners, indorses it away for a firm debt. The property in the bill passes to the indorsee.⁹

2. Bill specially indorsed to a firm under a wrong style (*e. g.*, to “Smith, Brown & Co.,” whereas the proper style is “Brown &

¹ *Lindley*, 3rd ed., p. 280; *Dickinson v. Walpy* (1829), 10 B. & C. at 137; *Thicknesse v. Bromilow* (1832), 2 Cr. & J. 425.

² *Garland v. Jacomb* (1873), 8 L. R. Ex. at 219.

³ *Ricketts v. Bennett* (1847), 4 C. B. at 699.

⁴ *Kimbrow v. Bullit* (1859), 20 Howard, 256.

⁵ *Yates v. Dalton* (1859), 28 L. J. Ex. 69.

⁶ *Parsons on Partnership*, 2nd ed., p. 99 n.; Cf. Art. 67, as to Companies.

⁷ *Forster v. Mackreth* (1867), 2 L. R. Ex. 163.

⁸ *Lindley*, p. 282; and Cf. Arts. 61, 64, 68.

⁹ Cf. *Smith v. Johnson* (1858), 3 H. & N. 222.

Power to
transfer.

Co."). One of the partners indorses it away, using, without the assent of the rest, the wrong style. The firm is not liable on the indorsement, but the property in the bill passes to the indorsee.¹

NOTE.—Cf. Art. 71 as to the principle. When a bill payable to the order of a firm is indorsed by a partner in the firm name, in fraud of his copartners, the property therein does not pass to an indorsee with notice, but there seem to be technical difficulties in the way of an action brought by the firm.² In such case the proper course (perhaps) is to give notice to the acceptor not to pay. He could defend an action against a holder with notice.

Ex-part-
ners.

Art. 80. When a bill is payable to the order of a firm, and the partnership is subsequently dissolved, the indorsement of an ex-partner in the late firm name transfers the property therein and authorizes the payment thereof.³

NOTE.—*Lewis v. Reilly*³ may be open to question in so far as it lays down that an ex-partner, by indorsing a bill in the late firm name, renders his former partners liable as indorsers to a holder with notice of the dissolution.⁴

Forgery, Etc.

Forged or
unautho-
rized sig-
natures.

Art. 81. No person is liable as a party to a bill whose signature has been placed thereon without his authority, and no right or title can be derived through a forged or unauthorized signature.⁵ (Cf. Art. 139.)

ILLUSTRATIONS.

1. A bill is payable to the order of John Smith. Another person of the name of John Smith gets hold of it and indorses it to D., who takes it in good faith and for value. D. acquires no title to the bill, he cannot enforce payment against any of the parties thereto, and should any party pay him, the payment is invalid.⁶

¹ *Williamson v. Johnson* (1823), 1 B. & C. 146; *Kirk v. Blurton* (1841), 9 M. & W. at 287.

² *Heilbutt v. Nevill* (1870), 5 L. R. C. P. 478, Ex. Ch.

³ *King v. Smith* (1829), 4 C. & P. 188; *Lewis v. Reilly* (1841), 1 Q. B. 349.

⁴ Cf. *Lindley*, 3rd ed., p. 423; *Kilgour v. Finlayson* (1789), 1 H. Bl. 155; *Abel v. Sutton* (1800), 3 Esp. 108; *Anderson v. Weston* (1840), 6 Bing. N. C. 296.

⁵ *Bank of Bengal v. Fagan* (1849), 7 Moore, P. C. at 72; *Harrop v. Fisher* (1861), 30 L. J. C. P. 283; *Massé*, § 1529.

⁶ *Mead v. Young* (1790), 4 T. R. 28; *Graves v. American Bank* (1858), 17 New York R. 205 (payment).

2. A bill is payable to C.'s order. His indorsement is forged. Forged or D., a subsequent holder, presents the bill for acceptance. The drawee accepts it, payable at his bankers'. The bankers pay D. unauthorized signatures. They cannot debit the acceptor with this payment.¹

3. A bill is payable to the order of a firm. X., one of the partners, fraudulently indorses it in the firm name to D. in payment of a private debt. The acceptor pays D. X. becomes bankrupt. X.'s copartners and trustee can recover from D. the money he received on the bill.²

4. C. specially indorses a bill to D. It is stolen before delivery to D., and D.'s indorsement in blank is forged on it. It comes into X.'s hands, and he gets his bankers to present it for payment. They receive payment and credit X. with the amount. X. subsequently draws out the whole sum. C. can recover the amount of the bill from the bankers.³

Explanation.—An unauthorized signature, not amounting to a forgery, may be ratified, but a forged signature cannot be ratified.⁴

ILLUSTRATIONS.

1. Note for 100*l.* X. forges B.'s signature to it as maker. Before the note matures the holder finds out that B.'s signature is a forgery, and threatens to prosecute X. In order to prevent this, B. gives the holder a memorandum, which says, "I hold myself responsible for the note for 100*l.* bearing my signature." The ratification is invalid. B. is not liable on the note.⁵

2. A. draws a bill payable to C.'s order. As between A. and C. the consideration is fraudulent. X. forges C.'s indorsement, and negotiates the bill to D., who takes it in good faith. D. finds out that C.'s indorsement has been forged, and after the bill is due he obtains a genuine indorsement from C., giving him half the value of the bill. D. cannot sue A.⁶

NOTE.—In America, it is laid down that a forgery may be ratified,⁷ but perhaps the cases might be explained on the ground of estoppel.

¹ *Roberts v. Tucker* (1851), 16 Q. B. 560, Ex. Ch.

² *Heilbutt v. Nevill* (1870), 5 L. R. C. P. 478, Ex. Ch.

³ *Arnold v. Cheque Bank* (1876), 1 L. R. C. P. D. 578; Cf. *Charles v. Blackwell* (1877), 2 L. R. C. P. D. at 157.

⁴ *Brook v. Hook* (1871), 6 L. R. Ex. 89; and Cf. *Williams v. Bayley* (1866), 1 L. R. H. L. 200, at 221.

⁵ *Id.*; and *Ex parte Edwards* (1841), 2 Mon. D. & D. 241.

⁶ *Esdaile v. Lanauze* (1835), 1 Y. & C. 394.

⁷ *Union Bank v. Middlebrook* (1865), 33 Connect. 95; *Howard v. Duncan* (1870), 3 Lans. New York, 174.

Forged or
unautho-
rized sig-
natures.

Exception 1.—A person whose signature is forged or placed on a bill without his authority may be estopped from setting up the fact. (Cf. Arts. 52 and 73.)

ILLUSTRATIONS.

1. B.'s acceptance to a bill is forged. A holder who takes it *bonâ fide* is afterwards informed that the signature is not B.'s, and accordingly writes to inquire. B. writes back to say the signature is his. B. is liable on this acceptance.¹

2. X., a partner in a trading firm, fraudulently accepts a bill in the firm name for a private debt of his own. It is negotiated to a holder for value without notice. The firm is estopped from setting up X.'s fraud.²

Exception 2.—If a bill is payable to the order of a married woman, as forming part of her separate estate, and her husband forges her indorsement, the property in the bill (probably) passes thereby to a holder who takes it for value and without notice.³

Exception 3.—A banker who, as drawee, pays a cheque held under a forged indorsement is protected by statute. (Art. 263.)

Exception 4.—A party to a bill may be estopped by his conduct;⁴ or, in certain cases, by the fact of becoming a party,⁵ from setting up that the signatures of other parties thereto are forged or unauthorized.

NOTE.—Where an estoppel by negligence is relied on, it must appear that the negligence was the direct and proximate cause of the forgery being taken as genuine.⁶ Where a bill is held under a forged signature, the Court will restrain its negotiation by injunction, or order it to be given up and cancelled.⁷

¹ *Brook v. Hook* (1871), 6 L. R. Ex. at 100; *Wilkinson v. Stoney* (1839), 1 J. & S. 509; *Robarts v. Tucker* (1851), 16 Q. B. at 577.

² *Hogg v. Skeen* (1865), 18 C. B. N. S. at 432 Willes, J.

³ *Dawson v. Prince* (1858), 27 L. J. Ch. 169, L. J.

⁴ *Arnold v. Cheque Bank* (1876), 1 L. R. C. P. D. 578.

⁵ Cf. Estoppels, Drawer, Art. 216; Maker of Note, Art. 287; Indorser, Art. 219; Acceptor, Art. 212; Acceptor *suprà* Protest, Art. 228; Fictitious Payee, Art. 139; Fictitious Drawee, Art. 2.

⁶ *Arnold v. Cheque Bank* (1876), 1 L. R. C. P. D. 578.

⁷ *Esdaile v. La Nauze* (1835), 1 Y. & C. 394; and *Joyce on Injunctions*, p. 366.

CHAPTER III.

CONSIDERATION.

Art. 82. "Value" means "valuable consideration," ^{Value defined.}
and is constituted by

(a.) Any consideration sufficient to support a simple contract.

ILLUSTRATIONS.

1. A cross acceptance,¹ the forbearance of the debt of a third person,² the compromise of a disputed liability,³ a promise to give up a bill thought to be invalid,⁴ or a debt barred by the Statute of Limitations,⁵ constitutes value.

2. A mere moral obligation,⁶ a debt represented to be due though not really due,⁷ the giving up a void note,⁸ or a voluntary gift of money,⁹ do not constitute value.

(b.) An antecedent or pre-existing debt.¹⁰

Explanation.—When the consideration for the issue or subsequent negotiation of a bill is an antecedent debt, it is immaterial whether the instrument is payable on demand or at a future time.¹¹

¹ *Rose v. Sims* (1830), 1 B. & Ad. at 526; Cf. *Burdon v. Benton* (1847), 9 Q. B. 843; *Hornblower v. Proud* (1819), 2 B. & Ald. 327.

² *Balfour v. Sea Assur. Co.* (1857), 3 C. B. N. S. 300.

³ *Cook v. Wright* (1861), 30 L. J. Q. B. 321.

⁴ *Smith v. Smith* (1863), 13 C. B. N. S. 418.

⁵ *Latouche v. Latouche* (1865), 3 H. & C. at 576.

⁶ *Eastwood v. Kenyon* (1840), 11 A. & E. 438; Cf. *Flight v. Reed* (1863) 3 L. J. Ex. 265.

⁷ *Southall v. Rigg* (1851), 11 C. B. 481.

⁸ *Coward v. Hughes* (1855), 1 K. & J. 443; but Cf. *Mather v. Maidstone* (1855), 18 C. B. 273, where an estoppel intervened.

⁹ *Hill v. Wilson* (1873), 8 L. R. Ch. at 894.

¹⁰ *Poirier v. Morris* (1853), 2 E. & B. 89; *Swift v. Tyson* (1842), 15 Pet. 1 Sup. Ct. U. S. Story, J.; Cf. *Butcher v. Stead* (1875), 7 L. R. H. L. 839.

¹¹ *Currie v. Misa* (1875), 10 L. R. Ex. 153, Ex. Ch.; approved but affirmed on another ground, 1 L. R. Ap. Ca. 554.

Value
defined.

NOTE.—*Adequacy of value*.—Valuable consideration has been defined as “some right, interest, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.”¹ The Courts do not inquire into the adequacy of a *bond fide* consideration.² This was always the law as regards considerations other than money, but when the consideration was money, the usury laws formerly created a difficulty. This has now been removed.³ But inadequacy of consideration may be evidence of bad faith or fraud.⁴ Again, inadequacy of consideration must be distinguished from partial absence of consideration (Art. 91), partial failure of consideration (Art. 93), part payment on account,⁵ or a mere advance made on a bill which is pledged or deposited as security (Art. 84).

Holder for
value.

Art. 83. If value has at any time been given for a bill, the holder of it is a holder for value as regards the acceptor and all parties prior to such time.⁶

ILLUSTRATIONS.

1. B. owes C. 50*l*. In order to pay C., A. at B.'s request, draws a bill on B. for 50*l*. in favour of C. C. is a holder for value and can sue A., though A. has received no value.⁷

2. A. draws a bill on B. payable to his own order. B. to accommodate A. accepts it. Subsequently A. gives value to B. A. is a holder for value.⁸

Explanation 1.—It is immaterial that the value is given by or to a person who never signed the instrument, or whose signature has been struck out.⁹

ILLUSTRATIONS.

1. B. makes a note in favour of C. C. is the treasurer of a loan society, and the consideration for the note is money advanced by the society to B. C. is a holder for value.¹⁰

2. C. the holder of a bill indorses it in blank to D., receiving no

¹ *Currie v. Misa* (1875), 10 L. R. Ex. at 162, per Lush, J.

² *Jones v. Gordon* (1877), 2 L. R. Ap. Ca. 616, H. L.; *Earl v. Peck* (1876), 64 New York R. 596.

³ *Jones v. Gordon*, *supra*, per Ld. Blackburn at 632.

⁴ *Id.*; Cf. *Allen v. Davis* (1850), 20 L. J. Ch. 44; *Simon v. Cridland* (1862), 6 L. T. N. S. 524.

⁵ *Dresser v. Missouri Co.* (1876), 3 Otto. 92, Sup. Ct. U. S.

⁶ *Hunter v. Wilson* (1849), 4 Exch. 489.

⁷ *Scott v. Lifford* (1808), 1 Camp. 246.

⁸ *Burdon v. Benton* (1847), 9 Q. B. 843.

⁹ Cf. *Fairclough v. Pavia* (1854), 9 Exch. 690 (signature struck out).

¹⁰ *Lomas v. Bradshaw* (1850), 19 L. J. C. P. 273.

value. D. for value transfers it by delivery to E. E. is a holder for value.¹ Holder for value.

3. A. at the request of X. draws a bill payable to C. for X.'s account with C. X. remits the bill to C. C. is a holder for value. It is immaterial that there is no consideration between A. and X., or that the consideration fails.²

4. S., in the West Indies, is indebted to C. in Paris. In order to pay him S. remits money to X., his correspondent in London, who thereupon obtains a bill for the amount, drawn by A. upon Paris, payable to C.'s order. X. remits the bill to C., but fails before he pays A. for it. S. subsequently pays C. C. is a holder for value, and can sue A.³

NOTE.—In Illust. 4, C. would be trustee for S. As to the effect of this, Cf. Art. 141. *Sale of Bill*.—In legal language a bill is said to be sold when it is transferred by delivery without indorsement. Not so in mercantile language. Suppose X. in London wishes to pay 1000 rupees to C. in India. X. goes to A., who has a correspondent in Calcutta, and gets him to draw a bill on Calcutta for Ra. 1000. Usually the bill is drawn payable to C., but sometimes it is drawn payable to X., who then indorses it to C. The amount paid by X. to A. for this bill depends on the rate of exchange between London and Calcutta on the day of the transaction. In some trades the custom is for X. to pay A. when he gets the bill; in other trades it is the custom not to pay till the next mail day. Such a transaction is called a sale of the bill by A. to X. X. the buyer, who sends the bill out to India, is called the Remitter. As to fixing the rate of exchange at which a bill is to be sold, see Art. 13, Expl. 1. See, too, the judgment of Wood, V.-C., explaining the practice of paying for bills partly by cash, partly by bankers' "marginal notes."⁴

Explanation 2.—Subject to Art. 84, the fact that the holder of a bill is the creditor of the person from whom he received it does not make such holder a holder for value unless he received it in respect of his debt.⁵

¹ *Barber v. Richards* (1851), 6 Exch. 63.

² *Munroe v. Bordier* (1849), 8 C. B. 862; *Watson v. Russell* (1862), 3 B. & S. 84; 5 B. & S. 968.

³ *Poirier v. Morris* (1853), 2 E. & B. 89.

⁴ *Jeffreys v. Agra Bank* (1866), 2 L. R. Eq. 676; Cf. *Ex parte Kemp* (1874), 9 L. R. Ch. 383.

⁵ *De la Chaumette v. Bank of England* (1829), 9 B. & C. 208; explained by *Currie v. Misa* (1875), 10 L. R. Ex. at 164, Ex. Ch.

Holder for
value.

Explanation 3.—A holder for value may or may not be a *bond fide* holder for value without notice.¹

Explanation 4.—The holder of a bill who receives it from a holder for value, but does not himself give value for it, has all the rights of a holder for value against all parties to the bill except the person from whom he received it.

ILLUSTRATION.

C., the payee of a bill, holds it for value. He indorses it to D. without value, *e.g.*, by way of gift or for collection. D. is, as regards the drawer and acceptor, a holder for value.²

Pledge or
lien.

Art. 84. A holder who has a lien on a bill, arising either from agreement or by implication of law, is deemed to be a holder for value to the extent of the sum for which he has a lien.

Explanation.—A bill is *prima facie* presumed to have been negotiated to the holder for value, and not to have been pledged or deposited as collateral security.³

ILLUSTRATIONS.

1. D. holds a bill indorsed in blank as agent for C. : D. wrongfully pledges it with E. E. is a holder for value to the extent of the sum he advanced, and if he took the bill without notice of the fraud, he can retain the bill as against C. the true owner.⁴

2. C., the holder of a bill for 100*l.*, deposits it with D. as security for a running account. At the time the bill matures the balance is in C.'s favour, but subsequently the balance turns against him to the extent of 50*l.* D. is a holder for value as to 50*l.*⁵

3. C., the holder of a bill for 100*l.*, indorses it to D. as a pledge

¹ *Raphael v. Bank of England* (1855), 17 C. B. at 172 ; Cf. Art. 86 and 98.

² *Milnes v. Dawson* (1850), 5 Exch. 948 ; Cf. *Denton v. Peters* (1870), 5 L. R. Q. B. at 477 ; and Art. 141.

³ *Hills v. Parker* (1866), 14 L. T. N. S. 107 ; *Re Boys* (1870), 10 L. R. Eq. 467.

⁴ *Collins v. Martin* (1797), 1 B. & P. 648.

⁵ *Attwood v. Crowdie* (1816), 1 Stark, 483 ; Cf. *Pease v. Hirst* (1829), 10 B. & C. 122 ; *Gray v. Seckham* (1872), 7 L. R. Ch. at 683.

for 50*l*. D. is a holder for value as to 50*l*., and this is the sum he can recover if he sues C.¹ Pledge or lien.

4. C. keeps with his bankers a loan account and a general account. C. indorses to the bank, as collateral security for his loan account, a bill for 1000*l*., and draws against it to the extent of 500*l*. C. becomes bankrupt, and his general account is overdrawn more than 500*l*. The bank are holders of the bill for full value.²

NOTE.—The “discount” of a bill must be distinguished from the pledge or deposit of a bill as security.³ A “discount” is a holder for full value.⁴ The position of a pledgee is this: If he sue a third party he sues as trustee for the pledgor, as regards the difference between the amount he has advanced and the amount of the bill.⁵ If the pledgor could have sued on the bill, the pledgee can recover the whole. If the title of the pledgor is defective, the pledgee can recover the amount of his advance, provided he took the bill without notice (Cf. Art. 85). Like any other bailee, the pledgee of a bill must use due diligence with reference to it, having regard to the peculiar nature of the thing bailed, *e.g.*, he must not part with it: he must if he can collect it at maturity; if he cannot, he must give the proper notices of dishonour.⁶ *Banker's Lien*.—A lien is “an implied pledge.”⁷ A banker has, in the absence of agreement to the contrary, a lien on all bills received from a customer in the ordinary course of banking business in respect of any balance that may be due from such customer.⁸ If the banker knows that the bills do not belong to his customer, no lien can attach.⁹ A broker who deals in bills has a lien similar to a banker's.¹⁰

Art. 85. A “*Bond fide* holder for value without notice” is a holder for value who, at the time he becomes the holder and gives value, is really and truly without notice of any facts which, if known, would defeat his title to the bill.¹¹ *Bond fide* holder for value without notice.

¹ *Attenborough v. Clarke* (1858), 27 L. J. Ex. 138.

² *Re European Bank* (1872), 8 L. R. Ch. 41.

³ *Ex parte Twogood* (1812), 19 Ves. 229; *Re Gomersall* (1876), 1 L. R. Ch. D. at 142.

⁴ *Id.*; Cf. *Thiedman v. Goldsmidt* (1859), 1 De G. F. & J. at 11.

⁵ *Reid v. Furnival* (1833), 1 Cr. & M. 538. Cf. Art. 141.

⁶ *Peacock v. Purcell* (1863), 32 L. J. C. P. 266.

⁷ *Brandao v. Barnett* (1846), 3 C. B. at 531, H. L.

⁸ *Id.*; *Johnson v. Roberts* (1875), 10 L. R. Ch. 505, where customer was a country bank; *Currie v. Misa* (1876), 1 L. R. Ap. Ca. at 569, H. L.

⁹ *Ex parte Kingston* (1871), 6 L. R. Ch. 632.

¹⁰ *Jones v. Peppercorn* (1853), John. 430.

¹¹ *Raphael v. Bank of England* (1855), 17 C. B. 161; Cf. *Whistler v. Forster* (1863), 14 C. B. N. S. at 258, and Art. .

Bonâ fide
holder for
value with-
out notice.

ILLUSTRATIONS.

1. C., the holder of a bill payable to his order, transfers it to D. for value, but without indorsing it. C. has obtained this bill by fraud, but D. has no notice of this. D. is not a *bonâ fide* holder.¹

2. C. who resides abroad, transmits to D., his agent in England, a bill for collection. C. has obtained this bill by fraud, but D. does not know it. At the time D. receives the bill, C. is indebted to him on the balance of account. D. is not a *bonâ fide* holder for value. He cannot recover on the bill—*aliter* if C. had transmitted the bill to D. in payment of his debt.²

3. C. indorses to D. a bill for 100*l.* to be paid for by two instalments of 50*l.* At the time D. gets the bill he pays one instalment. Before D. pays the second instalment, he receives notice that C. obtained the bill by fraud. D. subsequently pays the second instalment. D. (probably) is a *bonâ fide* holder to the extent of 50*l.* only, and that is the sum he is entitled to recover on the bill.³

NOTE.—The terms "*bonâ fide* holder," "innocent indorsee," &c., are used in the cases as synonymous with "*bonâ fide* holder for value without notice." The French equivalent, "*tiers porteur de bonne foi*," *i.e.*, "third party holder in good faith," well expresses the idea.

Notice.

Art. 86. Notice means actual notice—*i.e.*, either knowledge of the facts or a suspicion of something wrong, combined with a wilful disregard of the means of knowledge.⁴ If, as a fact, a bill is taken for value and without notice, it is immaterial that the holder took it under circumstances which show gross negligence.⁵

ILLUSTRATION.

D. the holder of a bill indorsed in blank transfers it to E. for value. E. suspects that D. had obtained the bill by a false repre-

¹ Art. 104. *Whistler v. Forster* (1863), 14 C. B. N. S. at 258.

² *De la Chaumette v. Bank of England* (1829), 9 B. & C. 208 as explained by *Currie v. Misa* (1875) 10 L. R. Ex. at 164, Ex. Ch.

³ *Dresser v. Missouri Co.* (1876), 3 Otto. 92, Sup. Ct. U. S. Cf. Art. 98 n.

⁴ *Raphael v. Bank of England* (1855), 17 C. B. at 174; *Oakley v. Oodeen* (1861), 2 F. & F. at 659; *Re Gomersall* (1875), 1 L. R. Ch. D. at 144.

⁵ *Goodman v. Harvey* (1836), 4 A. & E. at 876; *Swan v. North British Co.* (1863), 2 H. & C. at 184, 185.

sentation, and consequently makes no inquiries. As a fact, D. stole the bill. E. is not a *bona fide* holder, he is affected with notice.¹

Exception.—The fact that a bill is overdue (Art. 134), or that there is an irregularity patent on the face of it (Art. 138), operates as notice.

NOTE.—Test of bona fides.—This has varied greatly. Previous to 1820 the law was much as at present, but under the influence of Lord Tenterden, due care and caution was made the test.² In 1834 the King's Bench held that nothing short of gross negligence could defeat the title of a holder for value.³ Two years later Lord Denman states it as settled law that bad faith alone could disentitle a holder for value. Gross negligence might be evidence of bad faith, but was not conclusive of it.⁴ This principle has never since been shaken in England, and it seems now finally established in America.⁵ *Principal and Agent.*—As regards the parties affected with notice the ordinary rules of law apply to bills. Notice to the principal is notice to the agent; and notice to the agent is notice to the principal, subject to this: when the agent is himself a party to a fraud, he is not to be taken to have disclosed it to his principal. Again, when a bill is negotiated to an agent and notice is given to the principal, or *vice versa*, there must be a reasonable time for communication.⁷

Art. 87. A holder who derives his title to a bill through a *bona fide* holder for value without notice has all the rights of such *bona fide* holder against the acceptor and all prior parties, although he himself may have given no value, and may be affected with notice.⁸ Cf. Art. 134, Expl. 2.

Holder claiming under *bona fide* holder.

ILLUSTRATIONS.

1. C., a partner in a firm, fraudulently indorses a firm bill to D. in payment of a private debt. F. is cognizant of the fraud, but is not a party to it. D. indorses the bill to E., who takes it for

¹ Cf. *Jones v. Gordon* (1877), 2 L. R. Ap. Ca. at 628, H. L.

² Cf. *Gill v. Cubitt* (1824), 5 D. & R. 324.

³ *Crook v. Jadis* (1834), 5 B. & Ad. 909.

⁴ *Goodman v. Harvey* (1836), 4 A. & E. at 876.

⁵ *Murray v. Lardner* (1864), 2 Wallace at 121, Sup. Ct. U. S.; *Chapman v. Rose* (1874), 56 New York, at 140.

⁶ *Ex parte Oriental Bank* (1870), 5 L. R. Ch. 358.

⁷ Cf. *Willis v. Bank of England* (1835), 4 A. & E. at 39.

⁸ *May v. Chapman* (1847), 16 M. & W. 355 at 361; *Masters v. Ibberson* (1849), 8 C. B. 100; *Marion County v. Clark* (1876), 4 Otto. 278 Sup. Ct. U.S.

Holder
claiming
under
bona fide
holder.

value and without notice. E. indorses it to F. F. acquires E.'s rights. If he gave value to E., he can sue all the parties to the bill; if he did not give value, he can sue all parties except E.¹

2. C., by fraud, induces B. to make a note in his favour. C. indorses the note to D., who takes it for value and without notice. Subsequently D. indorses the note for value back to C. C. cannot sue B.²

Immediate
and remote
parties.

Art. 88. Any defence available against an immediate party is available against a remote party who is in privity with such immediate party.

Explanation 1.—"Immediate parties" are parties in direct relation with each other. All other parties are remote. *Prima facie*, the drawer and the acceptor, the drawer and the payee, the indorser and his indorsee, are in direct relation.

ILLUSTRATIONS.

1. A. draws a bill on B. payable to C., and delivers it to the latter. B. accepts the bill while in C.'s hands. B. and C. are remote parties.³

2. B. makes a note payable to C. *Prima facie* B. and C. are immediate parties; but if it appear that B. made the note at the request of X. under the belief that he had done something which he had not done, and that X. on his own account delivered the note to C., who gave value and took it without notice, then B. and C. are remote parties.⁴ *Aliter* if X. had been C.'s agent.⁵

Explanation 2.—Privity is created in all cases by want of consideration, and in some cases by notice: it may also be created by agreement.

NOTE.—1. The holder of a bill who has not himself given value is, as regards third parties, deemed to be the agent of the party from whom he received it, whatever their private relations may be.⁶

2. Notice creates privity when it is notice of defective *title* in the

¹ *May v. Chapman* (1847), 16 M. & W. 355.

² Cf. *Sawyer v. Wisewell* (1864), 91 Massachusetts. at 42.

³ *Robinson v. Reynolds* (1841), 2 Q. B. 196, Ex. Ch.

⁴ Cf. *Watson v. Russell* (1862), 3 B. & S. 34.

⁵ *Astley v. Johnson* (1860), 5 H. & N. 137.

⁶ Cf. *Fitch v. Jones* (1855), 5 E. & B. at 246, and cases quoted in Art. 97; also *Lee v. Hayes* (1865), 17 Ir. C. L. at 408.

party from whom the bill is taken, i.e., notice that he had no right to hold the bill or no right to part with it.¹ Title to a bill must be distinguished from the right to enforce payment of it against particular parties—e.g., the donee of a bill has a good title though he could not enforce payment against the donor.² Whenever a bill is held adversely to the true owner, and there is privity between the true owner and the *de facto* holder, a third party if sued, may set up the *jus tertii*.³ 3. Again, when a person expressly or impliedly agrees to hold a bill as agent or trustee for another person, he holds it subject to all defences against the person for whom he holds, irrespective of the state of accounts between them.⁴

Immediate
and remote
parties.

Art. 89. Every party to a bill is *prima facie* deemed to have become a party thereto for value.⁵

Presump-
tion of
value.

Art. 90. "Accommodation bill" means a bill whereof the acceptor (*i. e.*, the principal debtor on the instrument) is substantially a mere surety for some other person who may or may not be a party thereto.⁶

Accommo-
dation bill
or party.

"Accommodation party" means a person who has signed a bill as drawer, indorser, or acceptor, without receiving value, and for the purpose of lending his name to some other person.

ILLUSTRATIONS.

1. A. draws a bill on B. B. accepts it to accommodate A. It is negotiated. This is an accommodation bill.⁷

2. A. draws and indorses, and B. accepts, a bill for the accommodation of X, who is not a party thereto. A. and B. receive a commission for so doing. This is an accommodation bill.⁸

3. A. draws a bill on B. against a running account. B. accepts.

¹ See, e.g., Arts. 23, 54, 55, 134.

² See, e.g., Art. 83, Expl. 4, and Arts. 91, 134, 141.

³ See, e.g., Arts. 55 and 94.

⁴ *De la Chaumette v. Bank of England* (1829), 9 B. & C. 208, as explained; *Currie v. Misa* (1875), 10 L. R. Ex. at 164, Ex. Ch.

⁵ Cf. *Hatch v. Traves* (1840), 11 A. & E. 702; *Foster v. Dawber* (1851), 6 Exch. at 853.

⁶ Cf. *Oriental Corp. v. Overend* (1871), 7 L. R. Ch. at 146 and 151; and 7 L. R. H. L. at 358; *Ex parte European Bank* (1871), 7 L. R. Ch. 99.

⁷ *Collott v. Haigh* (1812), 3 Camp. 281.

⁸ *Oriental Corp. v. Overend* (1871), 7 L. R. Ch. 142.

Accommodation bill or party. This is not an accommodation bill, although the balance may have been against A. when the bill was drawn or accepted, or payable.¹

4. A. draws a bill on B. in favour of C. It appears that B. was indebted to C., and that A. drew the bill to accommodate B. This is not an accommodation bill, though A. is an accommodation drawer.²

5. A. draws a bill on B. B. accepts for value. C., whose name is well known, indorses the bill to give it currency. This is not an accommodation bill, but C. is an accommodation indorser.³

Explanation.—An accommodation party known to be such, may avail himself of any defence which the person accommodated could have set up.⁴

ILLUSTRATION.

B. and X. make a joint and several note payable to C. B. signs as maker to accommodate X. C. takes the note knowing this. If C. sue B., B. can set off a debt due from C. to X.⁵

NOTE.—A bill which is signed by one or more accommodation parties is frequently called an accommodation bill, but the definition given above is believed to be more strictly correct. The distinction becomes of importance when questions arise as to what is or is not a discharge of the bill, *e. g.*, payment by person accommodated, or the giving of time to such person. See too Arts. 168, 245.

Absence of value.

Art. 91. Mere absence of consideration, total or partial, is matter of defence against an immediate party or a remote party, who is not a holder for value, but it is not a defence against a remote party who is a holder for value.⁶

Explanation.—An accommodation party is liable to a holder for value, who takes a bill knowing him to be such.⁷

¹ *Ex parte Swan* (1869), 6 L. R. Eq. at 356; Cf. *Wilks v. Hornby* (1862), 10 W. R. 742.

² *Scott v. Lifford* (1808), 1 Camp. 246; Cf. *Sleigh v. Sleigh* (1850), 5 Exch. 514.

³ Cf. *Re Nunn* (1817) Buck. 113. This practice is not uncommon in the case of foreign bills: see, *e. g.*, *Société Générale v. Met. Bank* (1873), 27 L. T. N. S. 849.

⁴ *Bechervaise v. Lewis* (1872), 7 L. R. C. P. 372, at 377.

⁵ *Id.*

⁶ Cf. *Forman v. Wright* (1851), 11 C. B., at 492.

⁷ *Scott v. Lifford* (1808), 1 Camp. 246; Cf. *Strong v. Foster* (1855), 17 C. B. at 222; *Petty v. Cooke* (1871), 6 L. R. Q. B. 790; and Arts. 83, 90.

ILLUSTRATIONS.

Absence
of value.

1. B., by way of gift, makes a note in favour of C. C. cannot sue B.¹
2. C., the holder of a bill for value, indorses it to D. by way of gift. The property in the bill passes to D., but he cannot sue C.²
3. A. draws a bill on B. for 100*l*. B. accepts it to accommodate A. A. discounts it with C., who knows that it is an accommodation bill. C. can sue A. or B. for 100*l*.³ but if C., instead of discounting it, merely advanced 50*l*. on it, he can only recover 50*l*.⁴
4. B. owes A. 50*l*. A. draws a bill on B. for 100*l*. B., to accommodate A. and at his request, accepts it. If A. sue B. he can recover only 50*l*.⁵
5. C. is D.'s agent abroad. C. purchases a bill for D. The bill is made payable to C.'s order, and he indorses it to D. This is done merely for the purpose of safe transmission, and not to guarantee the bill. If the bill is dishonoured, C. is not liable to D. as indorser.⁶
6. A. and C. supply goods to B. A. draws a bill on B. for the price, and indorses it to C. to collect on joint account. If the bill is dishonoured, A. is not liable to C.⁷
7. B. accepts a bill drawn by A., to accommodate him. A. indorses it to C. without receiving value. C. indorses it to D. without receiving value. D. cannot recover from B., but it lies on B. to show that neither D. nor any intervening holder was a holder for value.⁸

Art. 92. Total failure of consideration is a defence against an immediate party, but it is not a defence against a remote party who is a *bond fide* holder for value without notice.⁹

Total
failure of
value.

¹ *Holliday v. Atkinson* (1826), 5 B. & C. 501.

² *Easton v. Pratchett* (1835), 1 C. M. & R. at 808; Cf. *Milnes v. Dawson* (1850), 5 Exch. 943.

³ Cf. *Mills v. Barber* (1836), 1 M. & W. 425; *Sturtevant v. Ford* (1842), 4 M. & Gr. 101.

⁴ *Nash v. Brown* (1817), cited *Chitty*, p. 60; *Jones v. Hibbert* (1817), 2 Stark. 304; *Re Gomersall* (1875), 1 L. R. Ch. D. at 144.

⁵ *Darnell v. Williams* (1817), 2 Stark. 166.

⁶ *Castrique v. Buttegiey* (1855), 10 Moore P. C. 110; Cf. *Re Nunn* (1817), Buck. 113.

⁷ *Denton v. Peters* (1870), 5 L. R. Q. B. 475.

⁸ *Mills v. Barber* (1836), 1 M. & W. 425; Cf. *Thompson v. Clutley* (1836), 1 M. & W. 212.

⁹ *Robinson v. Reynolds* (1841), 2 Q. B. at 211, Ex. Ch. As to what amounts

Total
failure of
value.

ILLUSTRATIONS.

1. B. makes a note payable to C. The only consideration is that C. is to act as B.'s executor. C. dies first. His personal representatives cannot enforce payment against B.¹

2. B. authorizes A. to draw on him against bills of lading. A. draws a bill on B. and indorses it to C. with the bill of lading attached. C. gives value to A. B. accepts the bill on receiving from C. the bill of lading. The bill of lading turns out to be a forgery, but C. did not know it when he obtained the acceptances. C. can sue B.²

3. A. draws a bill at three months on B. in favour of C., to be paid for in seven days. B., who is A.'s agent, accepts on his account. C. does not pay A. He cannot sue B.³

4. A. draws a bill on B. payable to his own order. B. accepts. The consideration between A. and B. fails. A. subsequently indorses the bill for value to C., who knows that the consideration between A. and B. has failed. C. cannot sue B.⁴

NOTE.—Failure of consideration, it seems, is a defence against a remote holder for value with notice. The reason probably is that it is in the nature of a fraud to negotiate a bill when the holder knows that the consideration on which he received it has failed.⁵ But might there not be cases in which it would not be a fraud to do so? Again, *qu.* as to the effect of failure of consideration after the maturity of the bill, *i. e.*, after a cause of action has accrued?⁶ When the consideration for a bill fails, the Court will usually restrain its negotiation by injunction.⁷

Partial
failure of
value.

Art. 93. Partial failure of consideration is a defence *pro tanto* against an immediate party when the failure is an ascertained and liquidated amount,

to total failure, *Wells v. Hopkins* (1839), 5 M. & W. 7; *Hooper v. Treffery* (1847), 1 Exch. 17.

¹ *Solly v. Hinde* (1834), 2 Cr. & M. 516.

² *Robinson v. Reynolds* (1841), 2 Q. B. 196, Ex. Ch.; Cf. *Leather v. Simpson* (1871), 11 L. R. Eq. 398.

³ *Astley v. Johnson* (1860), 5 H. & N. 137.

⁴ *Lloyd v. Davies* (1824), 3 L. J. K. B. 38; Cf. *Fairclough v. Pavia* (1854), 9 Ex. Ch. 690 (same principle assumed).

⁵ Cf. *Oulds v. Harrison* (1854), 10 Exch. at 579.

⁶ Cf. *Watson v. Russell* (1864), 5 B. & S. at 968.

⁷ Cf. *Patrick v. Harrison* (1792), 3 Bro. C. C. 476; *Bainbridge v. Hemingway* (1865), 12 L. T. N. S. 74.

but not otherwise.¹ It is not a defence against a remote party who is a holder for value.² Partial failure of value.

ILLUSTRATIONS.

1. B. accepts a bill for 100*l.* drawn by A. This is the agreed price of goods to be supplied by A. to B. When the goods arrive they are found to be inferior to sample, and worth only 80*l.* B. retains the goods. If A. sue B. on the bill, this is not a defence *pro tanto*.³

2. B. accepts a bill for 100*l.* This is the agreed price of two bales of cotton to be supplied by A. to B. A. only delivers one bale. A. indorses the bill to C. his agent to collect. C. can only recover 50*l.*⁴

3. B. accepts a bill drawn by A. for 100*l.* This is the agreed price of two bales of cotton to be supplied by A. to B. When the cotton arrives, one bale is found to be inferior to sample and is returned as useless. A. indorses the bill to C. without value. If C. sues B. he can only recover 50*l.*, the price of the one bale which is kept.⁵

NOTE.—In some cases of partial failure of consideration, the Court would perhaps restrain the holder from negotiating the bill after notice.⁶

Art. 94. Fraud is a defence against an immediate party and against a remote party who is not a *bond fide* holder for value without notice.⁷ Fraud or duress.

Explanation 1.—A bill is affected with fraud when the issue or any subsequent negotiation of it is obtained by fraud,⁸ or coercion,⁹ or when it is

¹ *Day v. Niz* (1824), 9 Moore, 159; *Warwick v. Nairn* (1855), 10 Exch. 762.

² *Archer v. Bamford* (1822), 3 Stark. 175.

³ *Glennie v. Imri* (1839), 3 Y. & C. 436.

⁴ *Cf. Agra Bank v. Leighton* (1866), 2 L. R. Ex. at 64, 65.

⁵ *Cf. Agra Bank v. Leighton* (1866), 2 L. R. Ex. at 64, 65.

⁶ *Cf. Jacobson v. Shanks* (1866), 12 Jur. N. S. 917.

⁷ *Arts.* 85 and 137; *Whistler v. Forster* (1863), 14 C. B. N. S. at 258.

⁸ *Wienholt v. Spitta* (1813), 3 Camp. 376; *Dawes v. Harness* (1875), 10 L. R. C. P. 166.

⁹ As to duress, *Duncan v. Scott* (1807), 1 Camp. 100 (*onus probandi*); *Kearns v. Durrell* (1857), 6 C. B. 596; *White v. Heylman* (1859), 34 Pennsylv. R. 143; *Loomis v. Ruck* (1874), 56 New York R. 462.

Fraud or duress. negotiated in breach of faith,¹ or in fraud of third parties.²

Explanation 2.—The holder of a bill subsequent to a fraud, who is not a *bond fide* holder for value without notice, cannot enforce payment against any party thereto, neither can he retain the bill against the true owner.³

NOTE.—When the consideration for a bill is clearly fraudulent, and it is in the hands of a party with notice, the Court will order it to be given up at once.⁴ When only a *prima facie* case of fraud is made out, the Court will restrain the negotiation of the bill for a specified time, in order that the question may be tried.⁵

Illegal consideration.

Art. 95. Illegality of consideration, total or partial, is a defence against an immediate party or a remote party who is not a *bond fide* holder for value without notice.⁶

Explanation.—The consideration for a bill is illegal when it is wholly or in part immoral, contrary to public policy, or forbidden under penalties by statute.⁷

NOTE.—When old cases are referred to it is important to notice whether the consideration was simply illegal or whether it was a consideration which by statute expressly made the bill void. Again, an illegal consideration must be distinguished from a merely void consideration.⁸ In America it has been held that if B. for value make a note payable to C., and C. for an illegal consideration indorse it to D., then D. can sue B. though he could not sue C.⁹

Bills void by statute

Art. 96. When a bill is given for a consideration which by statute expressly makes it void, it is as against the party who gave it void in the hands of all parties whether immediate or remote.¹⁰

¹ *Lloyd v. Howard* (1850), 15 Q. B. 995; *Burber v. Richards* (1851), 6 Exch. 63; Cf. Art. 55.

² *Jones v. Gordon* (1877), 2 L. R. Ap. Ca. 616, H. L.

³ *Id.* *Lloyd v. Howard*, *supra*; *Alsager v. Close* (1842), 10 M. & W. 576.

⁴ *Joyce on Injunctions*, p. 369; and see *Jones v. Lane* (1829), 3 Y. & C. at 293.

⁵ *Id.*

⁶ *Hay v. Ayling* (1851), 16 Q. B. at 431.

⁷ Cf. *Fitch v. Jones* (1855), 5 E. & B. 238.

⁸ *Id.*

⁹ *Armstrong v. Gibson* (1872), 11 Amer. R. 599.

¹⁰ *Edwards v. Dick* (1821), 4 B. & Ald. 212.

ILLUSTRATION.

A. draws a bill on D. payable to his own order. B. accepts it Bills void for a consideration which by statute avoids it. A. indorses it to C., by statute. who takes it for value and without notice. C. can sue A.,¹ but he cannot sue B.²

NOTE.—Most if not all the statutes which expressly avoided bills are now repealed, *e.g.*, the laws relating to usury and stock jobbing. By 5 & 6 Will. 4, c. 41, § 1, bills and notes given for wagers or gaming are not to be void, but are to be deemed to be given for an illegal consideration; and see 8 & 9 Vict. c. 109. In many American States usury laws still prevail.

Art. 97. The holder of a bill is *prima facie* deemed to be a *bona fide* holder for value without notice;³ but if in an action on a bill it is admitted or there is evidence⁴ that the issue or subsequent negotiation of such bill is affected with fraud or illegality, the *onus probandi* as to value is shifted, and the holder is called upon to prove that he is a holder for value.⁵

ILLUSTRATIONS.

1. A. draws a bill on B. and indorses it to C. C. sues B. It is shewn that B. accepted it for A.'s accommodation. C. is not called on to prove that he gave value, he can recover without so doing.⁶

2. B. makes a note payable to C. C. indorses it to D., who sues B. If it appears that B. made the note for an illegal consideration, D. must prove that he gave value.⁷

3. The holder of a bill indorses it to D. to get it discounted. D. fraudulently negotiates it to E., who negotiates it to F. F. sues the acceptor. Evidence is given of D.'s fraud. F. must prove that he is a holder for value.⁸

4. B. makes a note payable to C., the consideration for which is a wager, *i.e.*, a consideration void by statute, but not prohibited

¹ *Edwards v. Dick* (1821), 4 B. & Ald. 212.

² *Id.*; and *Reed v. Wiggins* (1862), 13 C. B. N. S. 220.

³ *King v. Milsom* (1809), 2 Camp. 6.

⁴ *Hall v. Featherstone* (1858), 3 H. & N. at 286 (evidence to go to a jury).

⁵ *Jones v. Gordon* (1877), 2 L. R. Ap. Ca. at 627, 628, H. L.

⁶ *Mills v. Barber* (1836), 1 M. & W. 425.

⁷ *Bailey v. Bidwell* (1844), 13 M. & W. 73.

⁸ *Cf. Smith v. Braine* (1851), 16 Q. B. 244; *Berry v. Alderman* (1853), 14 C. B. 95.

Presump-
tion of
value and
bona fides
may shift.

under a penalty. C. indorses it to D., who sues B. Evidence is given of these facts. D. is not called on to prove that he gave value.¹

5. Action against the maker of a note payable to bearer. It is shown to have been stolen from the true owner. It lies on the holder to prove that he gave value.²

6. An acceptance is given in renewal of a bill which turns out to be a forgery. The genuine bill is negotiated, and the holder sues the acceptor. Evidence is given of these facts. It lies on the holder to prove that he is a holder for value.³

7. A partner accepts a bill in the firm's name for a private debt and in fraud of his co-partners. The bill is negotiated. The holder sues the firm as acceptors. As soon as it appears that the bill was given for a private debt, the holder is called upon to prove that he is a holder for value.⁴

NOTE.—If the holder show that he is a holder for full value, it lies on the defendant to show that he took the bill with notice, for the presumption of *bona fides* is re-established;⁵ but what if the holder did not give full value? In America it is held that if the holder has in good faith given partial value, he may recover *pro tanto*.⁶ Probably the same would be held in England.

¹ *Fitch v. Jones* (1855), 5 E. & B. 238.

² *Raphael v. Bank of England* (1855), 17 C. B. 161.

³ *Mather v. Maidstone* (1856), 1 C. B. N. S. 273.

⁴ *Hogg v. Skeen* (1865), 18 C. B. N. S. 426.

⁵ *Raphael v. Bank of England* (1855), 17 C. B. 161; but cf. *Jones v. Gordon* (1877), 2 L. R. Ap. Ca. at 628.

⁶ *Holcomb v. Wyckoff* (1870), 10 Amer. R. 219; *Dresser v. Missouri Co.* (1876), 3 Otto. 92, Sup. Ct. U. S.

CHAPTER IV.

TRANSFER.

Transmission by Act of Law.

Art. 98. If a bill be held by an unmarried woman who subsequently marries, or if a bill be made payable to a married woman, the title thereto vests in the husband, provided he reduce it into possession.¹

Explanation 1.—If the husband dies without having reduced the bill into possession the title thereto reverts to the wife if she be alive, and passes to her personal representatives if she dies before her husband.²

Explanation 2.—During the marriage, the husband is for all purposes deemed to be the holder of a bill payable to the order of his wife, whether it was made payable to her before or after the marriage.³

ILLUSTRATIONS.

1. Bill payable to the order of C., a single woman. C. marries D. C., after marriage, indorses the bill to E. without her husband's

¹ Cf. *Fleet v. Perrins* (1868), 3 L. R. Q. B. at 541, affirmed 4 L. R. Q. B. 500. As to what is or is not a reduction of a bill into possession : Cf. *Nash v. Nash* (1817), 2 Mad. 133 ; *Sherrington v. Yates* (1844), 12 M. & W. 855, esp. at 865, Ex. Ch. ; *Hart v. Stephens* (1845), 6 Q. B. 937 ; *Scarpelini v. Atcheson* (1845), 7 Q. B. at 875 -876 ; *Latourette v. Williams* (1847), 1 Barb. 9. New York.

² *Hart v. Stephens* (1845), 6 Q. B. 937 ; *Williams on Executors*, 7th ed., pp. 848—852.

³ Cf. *McNeilage v. Holloway* (1818), 1 B. & Ald. 218.

Marriage consent. The indorsement is invalid :¹ but D. could validly indorse the bill, using his own name.²

2. A note is made payable to the order of C., a married woman. Her husband indorses it in his own name. This is a valid indorsement.³

NOTE.—When a bill is made payable to the order of a married woman, the husband may sue on it in his own name alone, or if he likes he may join his wife.⁴ When a bill is payable to the order of a single woman, who subsequently marries, both husband and wife should join in an action on it; but it has once been held that the husband may sue alone.⁵

Exception.—Bill forming part of wife's separate estate.⁶

Death. Art. 99. On the death of the holder of a bill the title thereto passes to his personal representatives, (executors or administrators, as the case may be).⁷

ILLUSTRATIONS.

1. C., the holder of a bill payable to order, dies. His administrator can enforce payment of it or indorse it away, using his own name.⁸

2. C., the holder of a bill payable to order, dies, having specifically bequeathed it to X. X. cannot sue on it or indorse it away, unless he first obtain an indorsement of the bill to him by C.'s executor.

NOTE.—An executor or administrator who indorses a bill should, in express terms, exclude personal liability, cf. Art. 76; and as he is not the agent of the deceased he cannot by his delivery complete an indorsement written by the latter. He must indorse it *de novo*; Art. 54. When there are two or more executors, the indorsement of one is probably sufficient to transfer the property in the bill.

¹ *Connor v. Martin* (1746), cited 3 Wils. at 5.

² *Roberts v. Place* (1846), 18 New Hamp. R. 183.

³ *Mason v. Morgan* (1834), 4 N. & M. 46; Cf. *Smith v. Marsack* (1848), 6 C. B. 486 at 503.

⁴ *Fleet v. Perrins* (1868), 3 L. R. Q. B. at 541.

⁵ *McNeillage v. Holloway* (1818), 1 B. & Ald. 218; but cf. *Sherrington v. Yates* (1844), 12 M. & W. at 865, Ex. Ch.

⁶ *Green v. Carbill* (1877), 4 L. R. Ch. D. 882, and Arts. 65, 66; Cf. Art. 81, Excep. 2.

⁷ *Williams on Executors*, 7th ed., 786.

⁸ *Rawlinson v. Stone* (1746), 3 Wils. 1 Ex. Ch.

Art. 100. A bill may be seized in execution by the sheriff under a writ of *fiery facias*.¹ Execution.

Explanation.—Payment to the sheriff of a bill so seized is valid, and, if the judgment-creditor give security, an action may be brought on the bill in the name of the sheriff.²

NOTE.—The language of the Act is obscure and ungrammatical. Can the sheriff hand over to the creditor or sell a bill payable to bearer?³ The Act gives him no power to indorse a bill payable to order. Further, he is responsible to the judgment debtor for any surplus over the amount of the debt and costs. It would seem then that he must keep all bills and endeavour to collect them himself.

Art. 101. If the holder of a bill, who is the beneficial owner of it, become bankrupt, or if a bill be made payable to a bankrupt for his own account, the title thereto vests in his trustee in bankruptcy.⁴ Bankruptcy.

NOTE.—The title of the trustee relates back to the commencement of the bankruptcy. It is sometimes a difficult question to determine the exact time when a bankruptcy commences, but this is a question beyond the scope of a treatise on bills. When the holder has merely a lien on a bill his trustee stands exactly in his shoes, having the same rights and duties in regard to it.⁵

Explanation.—Subject to Art. 102, if the holder of a bill is not the beneficial owner of it, the title thereto does not pass to his trustee in bankruptcy.⁶

ILLUSTRATIONS.

1. C. indorses a bill to D., his agent, for some special purpose. D. becomes bankrupt. The title to the bill does not vest in D.'s trustee.⁷

¹ 1 & 2 Vict. c. 110, § 12. As to a cheque drawn by the Accountant-General of the Court of Chancery but not issued: Cf. *Watts v. Jefferies* (1851), 3 Mac. & G. 422; *Courtoy v. Vincent* (1852), 21 L. J. Ch. 291.

² 1 & 2 Vict. c. 110, § 12.

³ Cf. *Mutton v. Young* (1847), 4 C. B. at 373.

⁴ Cf. *Bankruptcy Act*, 1869. 32 & 33 Vict. c. 71, § 15, cl. 3; Cf. *Green v. Steer* (1841), 1 Q. B. 707.

⁵ Cf. *Ex parte Buchanan* (1812), 1 Rose 280.

⁶ *Bankruptcy Act*, 1869, § 15, cl. 1.

⁷ *Ex parte Armistead* (1828), 2 G. & J. 371; Cf. *Belcher v. Campbell* (1845) 8 Q. B. at 11.

Bank-
ruptcy.

2. D. by fraud induces C. to indorse a bill to him. D. becomes bankrupt. The title to the bill not pass to D.'s trustee:

Exception 1.—The bankrupt holder of a bill who negotiates it before the date of the order of adjudication can give a good title to a person who takes it in good faith for value, and without notice that such holder has committed an act of bankruptcy available for adjudication.¹

Exception 2.—Payment of a bill to a bankrupt holder is valid if made before the date of the order of adjudication in good faith, and without notice that he has committed an act of bankruptcy available for adjudication.²

Exception 3.—An accommodation bill given for the accommodation of the bankrupt (probably) does not pass to the trustee in bankruptcy.

ILLUSTRATIONS.

A. draws a bill on B. payable to his own order. B. accepts it to accommodate A. A. is adjudicated bankrupt. He subsequently indorses the bill to C., who gives value. The indorsement is valid. C. can sue B.³

NOTE.—The terms of the present Act are very wide, see § 15, cl. 2, but the cases quoted probably still hold good.

Reputed
ownership

Art. 102. If the holder of a bill, who is not the beneficial owner of it, become bankrupt, the title thereto passes to his trustee in bankruptcy, as being in his reputed ownership, provided—(a) that such holder be a trader; (b) that the bill constitutes “a debt due to him in the course of his trade or business;” (c) that he held it at the commencement of

¹ *Bankruptcy Act*, 1869, §§ 94—95.

² *Id.*

³ *Wallace v. Hardacre* (1807), 1 Camp. 45; *Willis v. Freeman* (1810), 12 East. 656.

the bankruptcy with the consent and permission of ^{Reputed} the true owner.¹ ^{ownership.}

NOTE.—The provisions of the present Act, quoted above, are new, and no case on a bill has as yet arisen under them. It seems that a current bill would constitute a “debt due” within the meaning of the Act.

Transfer by Assignment.

Art. 103. A bill may be transferred by assignment ^{Assign-} or sale, subject to the same conditions that would ^{ment or} be requisite in the case of an ordinary chose in ^{sale.} action.

ILLUSTRATIONS.

C. is the holder of a note payable to his order. He may transfer his title to D. by a separate writing assigning the note to D.;³ or by a voluntary deed constituting a declaration of trust in favour of D.,⁴ or by a written contract of sale.⁵

NOTE.—A bill is a chattel, therefore it may be sold as a chattel. A bill is a chose in action; therefore it may be assigned as a chose in action. It is clear that a subsequent title under the law merchant would override a prior title under a sale or assignment according to the general law, *e.g.*, C. the holder of a bill payable to bearer, assigns by deed certain property, including the bill, to D. C. no longer has any property in the bill, but he holds it, and if he transfer it by delivery to E., who takes it for value and without notice, E.’s title overrides D.’s.⁶

Art. 104. If the holder of a bill payable to order ^{Bills to} transfers it for value without indorsing it, the transac- ^{order} tion operates as an equitable assignment of the bill.⁷ ^{transferred} ^{without} ^{indorse-} ^{ment.}

The transferee also acquires the right to compel indorsement.⁸

¹ 32 & 33 Vict. c. 71, § 15, cl. 5.

² *Ex parte Kemp* (1874), 9 L. R. Ch. at 388, Mellish, J. J.; as to the previous law, Cf. *Hornblower v. Proud* (1819), 2 B. & Ald. 327; *Thompson v. Giles* (1824), 2 B. & C. 422.

³ *Re Barrington* (1804), 2 Scho. & Lef. 112.

⁴ *Richardson v. Richardson* (1867), 3 L. R. Eq. 686; Cf. *Byles*, p. 148 n.

⁵ *Sheldon v. Parker* (1874), 3 Hun. New York, R. 498.

⁶ Cf. *Sheldon v. Parker*, *supra*; *Aulton v. Atkins* (1856), 18 C. B. 249.

⁷ *Whistler v. Forster* (1863), 14 C. B. N. S. at 258, Willes, J.

⁸ *Harrop v. Fisher* (1861), 10 C. B. N. S. at 203, Byles, J.

ILLUSTRATIONS.

Bills to
order
transferred
without
indorse-
ment.

1. C. the holder of a bill payable to order transfers it to D. for value without indorsing it. D. cannot sue the acceptor in his own name, or negotiate the bill by indorsing it to E.¹

2. A draws a bill on B. payable to his own order. B. accepts. A. discounts the bill with C., but by mistake or fraud omits to indorse it. C. indorses the bill in blank in A.'s name, and sues B. C. cannot recover; he had no right to indorse the bill.²

3. C. the holder of a bill payable to order transfers it for value to D. without indorsing it. If C. becomes bankrupt, the Court will compel his trustee in bankruptcy to indorse the bill.³ If C. dies, the Court will compel his executor or administrator to indorse.⁴

4. C., the holder of a bill for 1000*l.* payable to his order, deposits it with D. as security for a debt of 300*l.* C. becomes bankrupt. The Court will order C.'s trustee to indorse the bill to D. upon terms.⁵

Explanation.—When indorsement is subsequently obtained, the transfer takes effect as a negotiation (Art. 106) from the time when the indorsement is given.

ILLUSTRATIONS.

1. A. draws a bill on B. payable to C. or order. A. is induced to do so by C.'s fraud. C. transfers the bill to D. for value, but does not indorse it. D. subsequently receives notice of the fraud practised on A. After this he obtains C.'s indorsement. D. cannot recover from A.—he has no better title than C. *Aliter* if he had obtained C.'s indorsement before he had notice of the fraud.⁶

2. B. makes a note payable to C. or order. C. transfers it to D. for value without indorsing it. After the note is overdue D.

¹ *Harrop v. Fisher* (1861), 10 C. B. N. S. at 203, Byles, J.; and *Cunliffe v. Whitehead* (1837), 3 Bing. N. C. at 830.

² *Harrop v. Fisher* (1861), 10 C. B. N. S. 196.

³ *Ex parte Moubray* (1820), 1 Jac. & W. 428. Indorsement should negative personal liability: Cf. Art. 76. Indorsement by bankrupt is, it seems, equally good: *Ex parte Rhodes* (1837), 3 Mont. & Ayr. 217.

⁴ Cf. *Watkins v. Maule* (1820), 2 Jac. & W. 237.

⁵ *Ex parte Price* (1844), 3 Mon. D. D. 586; but cf. *Ex parte Brown* (1824), 1 Gl. & J. 407, where a different order was made.

⁶ *Whistler v. Forster* (1863), 14 C. B. N. S. 248; *Lancaster Bank v. Taylor* (1869), 1 Amer. R. 71.

obtains C.'s indorsement. D. holds the note subject to all equities Bills to order, &c.
between B. and C.¹

Art 105. If the holder (Art. 3) of a bill make *Donatio mortis causâ* delivery of it by way of gift in contemplation of death and die, this is a valid *donatio mortis causâ*.

ILLUSTRATIONS.

1. C. the holder of a note payable to bearer, hands it to D. in contemplation of death. C. dies. The property in the note passes to D.²

2. C., the holder of a bill payable to his order, gives it to D. in contemplation of death and dies. The title to the note passes to D.³

3. B. makes a note payable to C., and hands it to him as a gift in contemplation of death. B. dies. C. (probably) is not entitled to receive the amount out of B.'s estate.⁴

NOTE.—It is clear that the gift of a bill or note does not create a debt as against the donor, cf. Art. 91; but is this the principle of a *donatio mortis causâ*? The law as to the gift of bills and notes made by the donor requires re-consideration.⁵ The recent cases have arisen on cheques where the peculiar relations of banker and customer complicate the matter, see Art. 262.

Transfer by Negotiation.

Art. 106. "Negotiation" means the transfer of a Negotiation defined.
bill in the form and manner prescribed by the law
merchant with the incidents and privileges annexed
thereby, *i.e.*—

(1.) The transferee can sue all parties to the instrument in his own name.

(2.) The consideration for the transfer is *prima facie* presumed.

¹ *Clark v. Whitaker* (1871), 9 Amer. R. 286.

² *Miller v. Miller* (1735), 3 P. Wms. 356.

³ *Veal v. Veal* (1859), 27 Beav. 303. *Qu.* Must D. sue on the bill in the name of C.'s executor, or can he compel an indorsement?

⁴ *Tate v. Hilbert* (1793), 4 Bro. C. C. 286; *Holliday v. Atkinson* (1826), 5 B. & C. at 503.

⁵ Cf. *Williams on Executors*, 7 Ed. 778–780.

Negotia-
tion
defined.

- (3.) The transferor can under certain conditions give a good title, although he has none himself.
- (4.) The transferee can further negotiate the bill with the like privileges and incidents.

NOTE.—See rights of the holder, Arts. 136 to 145. Cf. Indian Draft Code, Art. 7. A bill is “negotiated when the holder transfers it to another person with the effect of constituting that other person the holder.” See the negotiation of bills and notes distinguished from the sale of goods by Holroyd, J.,¹ the assignment of a chose in action by Willes, J.,² the transfer of shares in a company by Byles, J.,³ and the transfer of an assignable Scotch bond by Blackburn, J.⁴

What bills
are ne-
gotiable.

Art. 107. Subject to Art. 124 a bill is negotiable which in legal effect is payable either to order or to bearer.⁵

Explanation 1.—In order that a bill may be negotiable it must originally contain express words making it negotiable (Art. 8); but when a bill is in its origin negotiable, the absence in an indorsement of words implying power to transfer does not limit the negotiable effect of such indorsement.

ILLUSTRATIONS.

1. B. makes a note in the form “pay C.,” omitting to add the words “or order.” If C. indorse it to D., his indorsement will not operate as a negotiation. The note is not negotiable.⁶

2. A bill is drawn payable to C. or order. C. indorses it to D. thus, “Pay the contents to D.,” omitting to add the words “or order.” The bill is negotiable, and D. can negotiate it by indorsing it to E.⁷

Explanation 2.—A bill is payable to bearer which

¹ *Wookey v. Pole* (1820), 4 B. & Ald. at 10 (comparing them to money).

² *Whistler v. Forster* (1863), 14 C. B. N. S. at 258.

³ *Swan v. N. B. Australasian Co.* (1863), 2 H. & C. at 184, 185.

⁴ *Crouch v. Credit Foncier* (1873), 8 L. R. Q. B. at 381.

⁵ Cf. *Crouch v. Credit Foncier* (1873), 8 L. R. Q. B. at 382.

⁶ *Plimley v. Westley* (1835), 2 Bing. N. C. 249; *Whyte v. Heylman* (1859), 34 Pennsylvania R. 143. But cf. Art. 248, Excep. 3.

⁷ *Eddie v. East India Co.* (1761), 2 Burr. 1216; *Leavitt v. Putnam* (1850), 3 New York R. 494; Cf. *Goodwin v. Roberts* (1875), 10 L. R. Ex. at 357, Ex. Ch.

is (a) expressed to be so payable, or (b) indorsed in blank.¹ What bills are negotiable.

ILLUSTRATION.

C. is the holder of two bills, one drawn payable to C., or bearer, the other indorsed to him in blank. He transfers them to D. by merely handing them to him. This is a negotiation of the bills to D.

Modes of Negotiation.

Art. 108. There are two modes of negotiation: namely—(a) negotiation by delivery, and (b) negotiation by indorsement. The form of the instrument determines which mode is applicable.² Modes of negotiation.

Art. 109. A bill which in legal effect is payable to bearer is negotiated by delivery alone.³ Negotiation of bills payable to bearer.

NOTE.—As to what constitutes a delivery, cf. Art. 53—55.

Explanation.—A bill made or become payable to bearer may be subsequently indorsed. Such indorsement merely adds the indorser's guarantee, and may at any time be struck out without affecting the negotiability of the instrument.⁴

Art. 110. A bill, which in legal effect is payable to order, is negotiated by indorsement.⁵ Negotiation of bill payable to order.

Art. 111. "Indorsement" means a writing on a bill signed by the holder, ordering the amount to be paid to a person therein designated, or to his order or to bearer. Indorsement defined.

Explanation.—An indorsement must be completed by delivery; and unless the contrary be expressed,

¹ Cf. Art. 8 and Art. 116.

² Cf. *Gibson v. Minet* (1791), 1 H. Bl. at 606, H. L.

³ Cf. *Gibson v. Minet* (1791), 1 H. Bl. at 606, and Art. 107.

⁴ *Fairclough v. Pavia* (1850), 9 Exch. 690 at 695; Cf. *Keene v. Beard* (1860), 8 C. B. N. S. at 382.

⁵ Cf. *Gibson v. Minet* (1791), 1 H. Bl. at 606; *Crouch v. Crédit Foncier* (1873), 8 L. R. Q. B. at 382, and Art. 107.

Indorsement defined.

the term "indorsement" means an indorsement completed by delivery.¹

The holder who indorses a bill is called an "Indorser." Any person who makes title to a bill through an indorsement is called an "Indorsee."²

NOTE.—This definition includes only indorsements proper, and not what may be called quasi-indorsements. If a person who is not the holder of a bill backs it with his signature, he thereby incurs liabilities similar to those of an ordinary indorser, and his signature is termed an indorsement, though it in no way affects the transfer of the bill; Cf. Art. 217. In France this quasi-indorsement is termed "Aval" as opposed to "Endossement," an indorsement proper.³ The term "indorsement" used without qualification, includes indifferently an indorsement in blank and a special indorsement.⁴

Indorsement both a transfer and an executory contract.

Art. 112. Every indorsement consists *primâ facie* of two distinct contracts—(a) the present transfer and negotiation of the bill; (b) the assumption of a future contingent liability on the part of the indorser.⁵

Explanation.—The liability of the indorser may be limited, negatived, or enlarged without affecting the negotiation of the bill or note.

ILLUSTRATION.

C. indorses a bill to D. by way of gift. The property in the bill passes to D., but C. is not liable as indorser. Art. 91.

NOTE.—For further illustrations see Arts. 64, 66, 68, 79, and cf. Art. 61. See also Arts. 120, 121, 123. It is important to distinguish the two factors in an indorsement, *i.e.*, the transfer and the indorser's contract, for they are often governed by different considerations. The first resembles a contract of sale, the second a contract of guarantee. The first is an executed, the second an executory contract. By the first a *jus in rem* is transferred, by the second a *jus in personum* is created.

¹ *Lloyd v. Howard* (1850), 15 Q. B. 995; Cf. Art. 53—55.

² Cf. *Barber v. Richards* (1851), 6 Exch. at 65.

³ French Code, Art. 141—142; *Nouguier*, §§ 821—886.

⁴ *Harmer v. Steele* (1849), 4 Exch. at 15.

⁵ Cf. *Denton v. Pcters* (1870), 5 L. R. Q. B. 475; *Sigourney v. Clarke* (1846), 17 Connecticut 519; *Castrique v. Buttigieg* (1855), 10 Moore, P. C. at 108.

Art. 113. The mere signature of the holder constitutes an indorsement, but any form of words may be added from which the intention to indorse can be gathered.¹ Form of indorsement.

ILLUSTRATIONS.

1. C., the holder of a bill signs it, and writes thereon, "I hereby assign this draft and all benefit of the money secured thereby to D." This is an indorsement by C.²

2. C., the holder of a note signs it, and writes thereon, "I bequeath—Pay the within to D., or his order, at my death," and gives it to D. This is not an indorsement, but an attempted testamentary gift, invalid under the Wills Act.³

NOTE.—Under the suspended Act, 17 Geo. 3, c. 30,⁴ the indorsement of a bill or note under 5*l.* required an attesting witness. French Code, Art. 137, requires an indorsement to be dated, to state the consideration, and the name of the indorsee, and to be to order. By Art. 138, if any of these requisites be wanting, it can only avail as a "procuration."

Art. 114. The indorsement must be written on the bill itself.⁵ Must be on the bill.

ILLUSTRATIONS.

1. An express promise in writing to indorse a bill is not an indorsement.⁶

2. The assignment of a note by a separate writing is not an indorsement.⁷

Explanation 1.—An indorsement on the face of a bill is valid.⁸

Explanation 2.—When there is no room on a bill for further indorsements, a slip of paper called an

¹ *Pinkney v. Hall* (1690), 1 Ld. Raym. 175; German Exchange Law, Art. 12.

² *Richards v. Franklin* (1840), 9 C. & P. at 225.

³ *Mitchell v. Smith* (1864), 4 De G. J. & S. 422.

⁴ Now suspended by 39 & 40 Vict. c. 69.

⁵ Cf. *Gibson v. Minet* (1791), 1 H. Bl. at 606; German Exchange Law, Art. 11; Pardessus, No. 343.

⁶ Cf. *Harrop v. Fisher* (1861), 10 C. B. N. S. at 204.

⁷ *Re Barrington* (1804), 2 Scho. & Lef. 112; Cf. *Ex parte Harrison* (1789), 2 Brown C. C. 614.

⁸ *Young v. Glover* (1857), 3 Jur. N. S. Q. B. 637; *Ex parte Yates* (1858), 2 De G. & J. 191.

Must be on the bill. "Allonge" may be attached thereto. It becomes part of the bill, and indorsements may be written thereon.¹

NOTE.—Some of the foreign codes contain minute provisions to prevent frauds, *e.g.*, that the first indorsement on the allonge must begin on the bill and end on the allonge; otherwise an allonge might be taken from one bill and stuck on to another; Cf. *Nouguier*, § 668.

Exception.—Indorsement on a "copy" in the case of a foreign Bill of Exchange.

NOTE.—As to "copies," see *Nouguier*, §§ 208—211, and German Exchange Law, Art. 70—72. A "copy" of a bill must be distinguished from the parts of a set; Cf. Art. 25, *ante*.

Partial indorsement.

Art. 115. A Partial indorsement, so as to split the right of action on a bill is invalid as a negotiation.²

ILLUSTRATIONS.

1. C., the holder of a bill for 100*l.*, indorses it. "Pay 50*l.* to D. or order, and 50*l.* to E. or order." This is invalid. Neither D. nor E. can sue or further indorse.³

2. C., the holder of a bill for 100*l.* indorses it. "Pay D. or order 30*l.*" This is invalid, unless C. also acknowledge the receipt of 70*l.*⁴

Indorsement in blank.

Art. 116. An Indorsement in Blank or General indorsement consists merely of the signature of the indorser without the expression of any further intention.⁵

ILLUSTRATION.

Bill payable to the order of John Smith. He signs on the back "John Smith." This act is interpreted by the law merchant as an indorsement in blank by John Smith, and operates as if he had written. 1. I hereby assign this bill to bearer. 2. I hereby under-

¹ Cf. *Monmohunee v. Secretary of State* (1874), 13 Bengal L. R. 359; German Exchange Law, Art. 11.

² Cf. *Heilbutt v. Nevill* (1869), 4 L. R. C. P. at 358; *Conora v. Earl* (1868), 26 Iowa 169. See *Nouguier*, § 665.

³ *Id.*

⁴ *Hawkins v. Cardy* (1699), 1 Ld. Raym. 360.

⁵ Cf. German Exchange Law, Art. 12, and Indorsement in blank distinguished from special indorsement; per Wilde, C. J., *Harmer v. Steele* (1849), 4 Exch. at 15; per Parke, B., *Robarts v. Tucker* (1851), 16 Q. B. at 579; and per Erle, C. J., *Law v. Parnell* (1859), 7 C. B. N. S. at 285.

takes that if this bill be dishonoured, I, on receiving due notice thereof, will indemnify the bearer. Indorsement in blank.

Under French Code, Arts. 137—138, an indorsement in blank merely operates as a “procuration,” and not as a negotiation of the bill.¹ The indorsee is considered as the agent or “mandataire” of the indorser, and their relations are regulated accordingly. If, however, the indorsee has given value, he may convert the blank into a special indorsement.—*Nouguier*, §§ 747—760.

Explanation.—A bill indorsed in blank is payable to bearer, and may be negotiated by delivery alone.²

Art. 117. A Special or Full indorsement designates the person to whom or to whose order the bill is thereby made payable. Special indorsement.

ILLUSTRATIONS.

1. “Pay D. or order.”
2. “Pay to D. & Co.,” which in legal effect is “pay D. & Co., or order.”³
3. “Pay to the order of the D. company,” which in legal effect is “pay the D. company or order.”⁴

Explanation—A bill specially indorsed is payable to the indorsee therein designated, and can only be negotiated by his indorsement.⁵

Art. 118. The holder of a bill indorsed in blank may convert such blank indorsement into a special indorsement by writing over the indorser’s signature a direction, ordering the amount of the bill to be paid to himself, or some other person.⁶ Conversion of blank into special indorsement.

Explanation.—The holder who converts a blank into a special indorsement does not thereby incur the liabilities of an indorser.⁷

¹ Cf. *Bradlaugh v. De Rin* (1870), 5 L. R. C. P. 473, Ex. Ch.; *Nouguier*, § 766.

² *Peacock v. Rhodes* (1781), 2 Dougl. at 636, per Lord Mansfield; *Swan v. North British Australasian Co.* (1863), 2 H. & C. at 184.

³ Art. 107.

⁴ *Soares v. Glyn* (1845), 8 Q. B. at 34, Ex. Ch.

⁵ *Harrop v. Fisher* (1861), 30 L. J. C. P. 283.

⁶ *Clerk v. Pigot* (1699), 12 Mod. 193; Cf. *Hirschfeld v. Smith* (1866), 1 L. R. C. P. 340; German Exchange Law. Art. 13, *Nouguier*, § 747—748.

⁷ *Vincent v. Horlock* (1808), 1 Camp. 441, and Art. 72.

ILLUSTRATION.

D. is the holder of a bill indorsed in blank by C. D. writes over C.'s signature "Pay to E., or order," and hands the bill to E. This operates as a special indorsement from C. to E.

Blank indorsement followed by special.

Art. 119. The negotiability of a bill which is originally payable to bearer, or which has been indorsed in blank, is not restrained by a subsequent special indorsement. It is still payable to bearer.¹

Explanation.—The special indorser is only liable on his indorsement to such parties as make title through it.²

ILLUSTRATION.

C., the payee of a bill, indorses it in blank and transfers it to D. D. specially indorses it to E., or order. E., without indorsing it, transfers it to F. Then F. is entitled as bearer to receive payment and to sue the drawer, acceptor, and C., but he cannot sue D. or E.³

NOTE.—*Striking out Indorsements.* The holder may at any time (e.g., at the trial after the plaintiff has finished his case)⁴ strike out any indorsement which is not necessary to his title. The indorser, whose indorsement is intentionally struck out, and all indorsers subsequent to him are discharged from their liabilities; *aliter* if the indorsement be struck out by mistake.⁵ *Qu.* if the present system of open pleading affects the necessity for striking out indorsements where the action is against the acceptor? The holder may, in some cases, make title through a person whose indorsement is struck out.⁶ Indorsements for collection may be struck out by the owner of the bill,⁷ and if the indorser of a bill takes it up or pays it when dishonoured, he may strike out his own and all subsequent indorsements, whether blank or special.⁸ Cf. Art. 239.

Qualified indorsement.

Art. 120. A Qualified indorsement in express terms

¹ *Walker v. Macdonald* (1848), 2 Exch. 527.

² *Id.* and *Story*, § 207.

³ *Smith v. Clarke* (1794), Peake 225.

⁴ *Mayer v. Jadis* (1833), 1 M. & Rob. 247; *Byles*, 153.

⁵ *Wilkinson v. Johnson* (1824), 3 B. & C. 428, and Art. 240.

⁶ *Fairclough v. Paria* (1854), 9 Exch. at 695; but cf. *Bartlett v. Benson* (1845), 14 M. & W. 733.

⁷ *Dugan v. United States* (1818), 3 Wheat. 173; *Bank of Utica v. Smith* (1820), 18 Johns. 229, New York.

⁸ *Callow v. Lawrence* (1814), 3 M. & S. 95; *German Exchange Law*, Art. 55.

limits or negatives the ordinary liability of the indorser. It relates only to the indorser's liability, and does not otherwise affect the negotiation of a bill so indorsed.¹ Qualified indorsement.

ILLUSTRATION.

C., the holder of a bill, indorses it to D. thus: "Pay D. or order without recourse to me," or "Pay D. or order sans recours,"² or "Pay D. or order at his own risk."³ C. thereby passes his interest to D., but incurs no liability as an indorser.

NOTE.—It is held in America that an indorser "without recourse" is responsible to the same extent that a transferor by delivery is responsible, *e.g.*, where the bill is a forgery.⁴

Art. 121. A Facultative indorsement in express terms waives the duties or enlarges the rights of the holder. It relates only to the indorser's liability, and does not otherwise affect the negotiation of a bill so indorsed. Facultative indorsement

ILLUSTRATION.

C., the holder of a bill indorses it to D., adding the words "Notice of Dishonour waived." No subsequent party is obliged to give notice of dishonour to C.⁵

NOTE.—Notice of dishonour may be waived verbally; *à fortiori*, then it may be waived in express terms. In America it has been held that an indorsement in the form given above affects subsequent indorsers,⁶ and in France a similar construction has been put on the phrase "Retour sans frais" or "Retour sans protêt."⁷

Art. 122. The indorser of a bill of exchange may insert in his indorsement a reference in case of need. Indorsement in need.
(Cf. Art. 7.)⁸

¹ Cf. *Cuatrique v. Buttigieg* (1855), 10 Moore P. C. 110—112, and 117; German Exchange Law, Art. 14. *Nouquier*, § 268—270.

² *Goupy v. Harden* (1816), 7 Taunt. at 163.

³ *Rice v. Stearns* (1807), 3 Massachusetts R. 224.

⁴ *Dumont v. Williamson* (1867), reported in England, 17 L. T. N. S. 71; and *Hannum v. Richardson* (1875), 21 Amer. R. 152. See Art. 226.

⁵ Cf. *Phipson v. Keltner* (1818), 4 Camp. 285, and Arts. 168 cl. 4, 200 cl. 7.

⁶ *Daniell*, § 1090.

⁷ *Nouquier*, § 259. German Exchange Law, Art. 42, is ambiguous.

⁸ Cf. *Leonard v. Wilson* (1834), 2 Cr. & M. 589; and Art. 134.

Art. 123. A "Conditional indorsement" transfers the bill to the indorsee, subject to the fulfilment of a condition therein specified. On the failure of the condition the title to the bill reverts to the indorser.¹

Condi-
tional in-
dorsement.

ILLUSTRATION.

C., the holder of a bill, indorses it "Pay D. or order upon my name appearing in the *Gazette*, as ensign in any regiment, between the 1st and 64th, if within two months from this date." The bill is subsequently accepted. D. indorses it to E., who indorses it to F. At maturity F. presents the bill to the acceptor who pays it, although the condition has not been fulfilled. The payment is invalid, and C. can sue the acceptor on the bill and recover.²

NOTE.—The validity of a conditional indorsement is perhaps doubtful. *Robertson v. Kensington* (1811),³ seems to be the only decision on the point either in England or America. The judgment is not given in the report, so the *ratio decidendi* is not clear. Byles, Chitty, and Story merely say that a conditional indorsement is effectual, if the bill be subsequently accepted. In *Soares v. Glynn* (1845),³ the Exchequer Chamber seem to doubt whether a conditional indorsement could be allowed by the law merchant. No foreign code recognises a conditional indorsement. *Pothier* (No. 38) says that the indorser in his indorsement must conform to the same conditions as the drawer in his draft. It is continually laid down in the cases that the indorser is a new drawer, though not the drawer of a new bill. Apply this as a test. The drawer who is in direct relation with the drawee, may not draw a bill conditionally (Art. 10.) Why should the indorser, who is a stranger to the drawee, be allowed to impose a condition which the drawer may not? Again, the payee of a bill must be certain (Art. 9); does not this apply to the indorsee? But under a conditional indorsement the title of the indorsee is defeasible. It is uncertain whether the indorser or the indorsee is the person entitled to receive payment. It would be convenient to give effect to a conditional indorsement as if it were merely restrictive. In that case the indorsee would be entitled to collect the bill irrespective of the fulfilment of the condition. If the condition were fulfilled he would hold the proceeds on his own account, if it were not he would hold them in trust for the indorser. Though the conditional transfer of a bill gives rise to difficulty, there seems to be no reason why the indorser's liability should not be conditional (Cf. Art. 112.) Indian Draft

¹ Story, § 217; Thomson, p. 185.

² *Robertson v. Kensington* (1811), 4 Taunt. 30.

³ 8 Q. B. at 30; Cf., too, *Mitchell v. Smith* (1864), 4 De G. J. & S. 422.

Code, Art. 34, adopts this view, and provides that "an indorsement may be so made as only to charge the indorser upon the occurrence of a specified event which possibly may never happen." As to the conditional delivery of a bill absolute in form, see Art. 55.

Art. 124. A "Restrictive indorsement" constitutes the indorsee the holder of the bill, but expresses that he is not the beneficial owner of it.

ILLUSTRATIONS.

1. "Pay D. or order for the use of X."¹
2. "Pray pay the money to my use."²
3. "Pay the contents to my servant for my use."³
4. "The within must be credited to D., value in account."⁴
5. "Pay the contents to my use," or "Pay the contents to the use of X," or "Carry this bill to the credit of X."⁵
6. "Pay D., or order for our use, value received in account."⁶
7. "Pay D., or order for the account of X."⁷
8. "Pay D., or order for my use."⁸
9. "Pay to the order of D. & Co., under provision for my note in favour of X."⁹
10. "Pay D. & Co., or order for collection."¹⁰

NOTE.—A "restrictive indorsement" may, perhaps, be defined as "an indorsement which expresses that it is a mere authority to deal with the bill as directed, and not a transfer of the ownership thereof."

Explanation 1.—A statement in an indorsement that the value for it has been furnished by some person other than the indorsee does not make it restrictive.¹¹

ILLUSTRATION.

Bill is indorsed "Pay D., or order, value in account with X."

¹ *Evans v. Cramlington* (1687), 1 Show. 4; 2 Show. 509, Ex. Ch.

² *Cf. Snee v. Prescott* (1743), 1 Atk. at 249.

³ *Eddie v. East India Co.* (1761), 2 Burr. at 1227, Wilmot, J.

⁴ *Anchor v. Bank of England* (1781), 2 Dougl. 637.

⁵ *Cf. Rice v. Stearns* (1807), 3 Mass. R. at 226.

⁶ *Wilson v. Holmes* (1809), 5 Mass. R. 543.

⁷ *Treuttel v. Barandon* (1817), 8 Taunt. 100; *Blaine v. Bourne* (1875), 23 Amer. R. 431.

⁸ *Sigourney v. Lloyd* (1828), 8 B. & C. 622; affirmed 5 Bing. 525, Ex. Ch.

⁹ *Wedlake v. Hurley* (1830), Lloyd and Welsby, 330.

¹⁰ *Sweeney v. Easter* (1863), 1 Wallace 166, Sup. Ct. U.S.; *Cf. German Exchange Law*, Art. 17.

¹¹ *Potts v. Reed* (1806), 6 Esp. 57; *Murrow v. Stuart* (1853), 8 Moore P. C. 267; *Cf. Art. 10, Expl. 2.*

Restrictive indorsement. This is not restrictive. It is in effect a simple indorsement to D. or order.¹

• *Explanation 2.*—The mere omission to add words of negotiability to a special indorsement does not make it restrictive. Art. 107.

NOTE.—An indorsement in the form “Pay D. only” is probably restrictive, as being in terms a mere authority to D. to collect. If it appeared that D. was a holder for value, it is doubtful how far the restriction would be operative.² Under German Exchange Law, Art. 15, if C. indorse a bill “pay D. only,” the result is this: D. can still indorse the bill away, but C. is not liable on his indorsement. It is in effect an indorsement “without recourse,” and not a restrictive indorsement.

Explanation 3.—A restrictive indorsement gives the indorsee no power to transfer his rights as indorsee unless it expressly authorize him so to do.³

ILLUSTRATION.

Bill indorsed “Pay to D. for my account.” D. cannot, by indorsing it to E., authorize E. to collect it. *Aliter* if the indorsement ran “pay D. or order for my account.”

Explanation 4.—A restrictive indorsement gives the indorsee the right to collect the bill and to sue any party thereto that his indorser could have sued.⁴

NOTE.—It has never been attempted to make the payor responsible for the due application of the proceeds by the indorsee, and it is clear that he is not responsible. In the cases where the indorsee has sued the bill has been payable to him “or order.” Can the omission of these words make any difference?⁵

Explanation 5.—The indorsee, under a restrictive indorsement, may transfer his rights as indorsee if he be authorized by the terms of the indorsement so to do. In such case, the second and every subsequent

¹ *Buckley v. Jackson* (1868), 3 L. R. Ex. 135.

² Cf. *Edie v. East India Co.* (1761), 2 Burr. 1225—1227, per Denison, J., and *Wilmot, J.*; *Rice v. Stearns* (1807), 3 Mass. at 225.

³ *Lloyd v. Sigourney* (1829), 5 Bing, at 532 Ex. Ch.; Cf. *Pothier*, No. 89; German Exchange Law, Art. 17.

⁴ *Evans v. Cramlington* (1687), 2 Show. 509, Ex. Ch.; *Wilson v. Holmes* (1809), 5 Mass. R. 543. Cf. German Exchange Law, Art. 17.

⁵ Cf. *Dehens v. Harriot* (1691), 1 Show. 103, when the indorser sued.

indorsee takes the bill with the same rights and subject to the same liabilities as the original restricted indorsee.¹ Restrictive
indorse-
ment.

Explanation 6.—When a bill is indorsed restrictively, the relation between the indorser and the indorsee is that of principal and agent.²

ILLUSTRATIONS.

1. C. indorses a bill "Pay D. or order for my use." D. indorses it to, and discounts it with, E. on his own account. E. collects it at maturity. C. can recover the amount of the bill from E.³

2. C. indorses a bill "Pay D. or order for the use of X." D. collects the bill at maturity. If he misappropriate the money, X. cannot sue him.⁴ The action must be brought by C.⁵

3. C. indorses a bill "Pay D. or order for account of X." D. is X.'s agent. D. indorses the bill to E. who collects it. X. can sue E. for the amount so received.⁶

4. A. draws a bill on B., and indorses it to C. C. indorses it, "Pay D. or order for my use." The bill is dishonoured, and D. sues A. the drawer. If A. have any defence against C., he may set it up against D.⁷

NOTE.—The restricted indorsee is frequently termed a trustee, but he is only a trustee in the sense that an agent is a trustee.⁸ German Exchange Law, Art. 17, deals with restrictive indorsements, and accords with English law as stated above. In France the mere omission of the statement of the value received makes an indorsement restrictive.⁹ The indorsee is then deemed to be the agent or "mandataire" of the indorser. *Pothier*, Nos. 23 and 88—90, has worked out the results with great clearness.

¹ *Treuttel v. Barandon* (1817), 8 Taunt. 100; *Lloyd v. Sigourney* (1829), 5 Bing. at 531; *Sweeney v. Easter* (1863), 1 Wallace R. 166, Sup. Ct., U.S.; German Exchange Law, Art. 17.

² Cf. *Dehers v. Harriot* (1691), 1 Show. 163; *Potts v. Reed* (1806), 6 Esp. at 59; *Rice v. Stearns* (1807), 3 Mass. at 225; *Blaine v. Bourne* (1875), 23 Amer. R. at 432; by analogy, *Maguire v. Dodd* (1859), 9 Ir. Ch. 452; *Pothier*, Nos. 23 and 89—90.

³ *Lloyd v. Sigourney* (1829), 5 Bing. 525, Ex. Ch.

⁴ *Wedlake v. Hurley* (1830), Lloyd and Welsby, 330.

⁵ Id. at 332, per Vaughan, B.

⁶ *Treuttel v. Barandon* (1817), 8 Taunt. 100. If D. had not been X.'s agent, C. must have brought the action.

⁷ *Wilson v. Holmes* (1809), 5 Mass. R. 543.

⁸ Cf. *Cook v. Lister* (1863), 13 C. B. N. S. at 597, Willes, J.

⁹ Cf. French Code Art. 138; *Nouguier*, § 744.

Who may negotiate a bill.

De facto
holder
must nego-
tiate.

Art. 125. A bill must be negotiated by the *de facto* holder. The transfer of a bill by any other person does not operate as a negotiation of the instrument.

Explanation.—"De facto holder" means the person in possession of a genuine bill, to whom it is in terms payable, whether he be lawfully in possession thereof or not.

NOTE.—The term "holder" is used in the cases in different senses. It is generally used to denote the "lawful holder," and as such it is defined in Art. 3. It then includes—(1) the person to whom a bill is in terms payable, and whose title is good against all the world; (2) the person to whom a bill is in terms payable, and who, as against third parties, is entitled to enforce payment—though as between himself and his transferor, he is a mere agent or bailee with a defeasible title (*e.g.*, an indorsee for collection). But "holder" is also used to denote an unlawful holder, that is, the person to whom a bill is in terms payable, whose possession is unlawful, but who nevertheless can give—(a) a valid discharge to a person who pays it in good faith (see Art. 236), and (b) a good title to a person who takes it before maturity in good faith and for value (see Art. 137). An unlawful holder must be distinguished from the mere wrongful possessor: *e.g.*, a person holding under a forged indorsement, or a person who has stolen a bill payable to order, who has no rights and can give none. When, then, a proposition is laid down which applies equally to lawful and unlawful holders, the term *de facto* holder is used to include both.

Bill to
bearer.

Art. 126. The *de facto* holder of a bill payable to bearer (Art. 107) is the person in possession of it.

ILLUSTRATIONS.

1. C., the payee of a bill, indorses it in blank and transmits it to D. for some special purpose (*e.g.*, discount or collection). As long as D. retains possession, D. and not C. is the *de facto* holder, and he alone can negotiate it.¹

¹ *Marrton v. Allen* (1841), 8 M. & W. at 504.

2. C. is the holder of a note payable to bearer. C. loses it and D. finds it. D. and not C. is the *de facto* holder, and he alone can negotiate it. Bill to bearer.

Art. 127. The *de facto* holder of a bill payable to order is the person in possession of it, and to whose order it is payable. Who may negotiate bill to order.

NOTE.—See in illustration, Arts. 103—104.

Explanation.—If the person to whose order a bill is meant to be payable is wrongly designated, or if his name is mis-spelt, he may negotiate the bill by indorsing it as described.¹

ILLUSTRATION.

A bill is indorsed to J. Smythe. The man's real name is T. Smith. He can validly negotiate the bill by indorsing it as J. Smythe.²

NOTE.—The usual and proper course is for the holder to sign first the name as described or spelt in the bill, and then to put underneath his proper signature—*e.g.*, in the case given the indorsement would be signed,

J. Smythe,
T. Smith.

If a person trades under an assumed name, can he validly negotiate a bill payable to him under his trade name by indorsing it in his individual name, or *vice versa*?—*e.g.*, John Smith trades as "Brown and Co." A bill is drawn payable to the order of "Brown and Co." He indorses it as John Smith. Is the presentment for payment of this bill by the indorsee a due presentment? In Massachusetts it seems it is.³ The point was raised in *Walker v. Macdonald* (1848),⁴ but the decision proceeded on the ground that there was a prior indorsement in blank, and therefore the bill was payable to bearer.

Exception.—When the title to a bill payable to order is transmitted by act of law, and the person to whom the title is transmitted obtains possession of the bill, he becomes the *de facto* holder.

¹ *Williamson v. Johnson* (1823), 1 B. & C. at 149, Holroyd, J.; *Schultz v. Astley* (1836), 2 Bing. N. C. at 553, Tindal, C. J.

² *Id.* & *Cf. Willis v. Barret* (1816), 2 Stark. 29. Cf. Art. 9.

³ *Bryant v. Eastman* (1851), 61 Mass. 111.

⁴ 2 Exch. 527.

Who may
negotiate
bill to
order.

NOTE.—See transmission by marriage (Art. 98), death (Art. 99), execution (Art. 100), bankruptcy (Art. 101), reputed ownership (Art. 102). See also dissolution of partnership (Art. 80). In America another exception is admitted in the case of corporations. Thus a bill payable to the order of the cashier or other officer of a bank is deemed to be payable to the bank; therefore, any person who can indorse for the bank can negotiate such a bill—*e.g.*, C. is the cashier of the “X. Bank,” and D. is the President. A bill bought by the bank is indorsed “pay to the order of C., cashier.” The “X. Bank” can sue on the bill in the corporate name, and D. the President can validly indorse it away without a previous indorsement by C.¹ The expediency of this exception is doubtful.

Several
payees or
indorsees.

Art. 128. Where a bill is payable to the order of two or more persons who are not partners, all must indorse.

Explanation.—One may indorse on behalf of the rest if he have authority so to do.²

ILLUSTRATIONS.

1. B. accepts a bill payable to the “order of C. and D.” D. alone indorses it to E. This is insufficient. E. cannot sue B.³
2. Bill payable to “the order of C. and D.” C., by D.’s authority, indorses it to E. “for self and D.” This is sufficient.
3. Bill payable to “C. and D. or the order of either.” C. alone indorses it to E. This is sufficient.⁴

To whom a bill may be negotiated.

Certainty
as to in-
dorsee.

Art. 129. When a bill is specially indorsed, the indorsee must (probably) be designated with the same certainty that is requisite in the case of an original payee.⁵

NOTE.—Art. 123 creates the doubt. See the question there discussed. As to payee, see Art. 9.

¹ *Watersliet Bank v. White*, 1 Denio, 609; *First Nat. Bank v. Hall* (1871), 44 New York R. 395.

² *Carrick v. Vickery* (1781), 2 Dougl. 652; and cf. *Heilbut v. Nevill* (1869), 4 L. R. C. P. at 356, 358, per Willes, J.

³ Id.

⁴ Cf. *Watson v. Evans* (1863), 32 L. J. Ex. 137.

⁵ Cf. *Pothier*, No. 38; *Soares v. Glyn* (1845), 8 Q. B. at 30, Ex. Ch.; *Murray v. East India Co.* (1821), 5 B. & Ad. 204.

Art. 130. A bill may be negotiated to any party thereto—i.e., drawer, drawee, acceptor or prior indorser,—and such party, subject to Art. 238, may re-issue and further negotiate it.¹

ILLUSTRATIONS.

1. C. is the holder of a bill accepted by B. payable three months after date. C. can indorse the bill to B, the acceptor, and B, at any time before maturity, may re-issue and indorse it to D.²

2. A., the drawer of a bill payable to his own order, indorses it to C. C. indorses it to D., who indorses it back to A. A. can re-issue the bill and indorse it to E.³

Explanation.—When a bill is negotiated back to a party already liable thereon, he cannot sue the intermediate parties.⁴

ILLUSTRATIONS.

1. C., the holder of a bill, indorses it to D. D. indorses it to E., who indorses it back to C. C. cannot sue D. or E., for they in turn could sue him as a prior indorser.⁵

2. C., the holder of a bill, indorses it “without recourse” to D., who indorses it E. E. indorses it back to C. C. can sue D. and E., for they have no claim against him as a prior indorser.⁶

3. B., for the accommodation of C., makes a note in his favour. C. indorses it to D., who discounts it with B. the maker. B. can sue C.⁷

NOTE.—The explanation given above is necessary in order to avoid circuitry of action. See further Art. 234, Expl. 2.

¹ Cf. German Exchange Law, Art. 10.

² *Attenborough v. Mackenzie* (1856), 25 L. J. Ex. 244.

³ Cf. *Hubbard v. Jackson* (1827), 4 Bing. 390; and *Jones v. Broadhurst* (1850), 9 C. B. 173.

⁴ Cf. *Wilders v. Stevens* (1846), 15 M. & W. 208 at 212; see per Alderson, B.

⁵ *Bishop v. Hayward* (1791), 4 T. R. 470.

⁶ Cf. *Morris v. Walker* (1850), 15 Q. B. at 594.

⁷ *Morris v. Walker*, (1850), 15 Q. B. 589.

Time of Negotiation.

Negotiable till discharged. Art. 131. A bill which is in form complete and negotiable (Art. 107), may be negotiated at any time until it is discharged.¹

Explanation.—The character and incidents of the negotiability of a bill depend on the time at which it is negotiated.

NOTE.—As to the transfer of bill incomplete in point of form, see Art. 23 ; as to the issue of a bill by a person other than the maker, Art. 54.

Presumption as to time. Art. 132. Unless the contrary appear on the instrument itself, a bill is *prima facie* presumed to have been negotiated before maturity,² but apart from this general rule, there is no presumption as to the exact time of negotiation.³

NOTE.—Circumstances of strong suspicion short of direct evidence may rebut the *prima facie* presumption and make it a question for the jury whether a bill was negotiated before or after maturity.⁴

When bill deemed overdue. Art. 133. A bill which is payable at a future time is deemed to be overdue after the expiration of the last day of grace;⁵ Cf. Art. 20.

It is uncertain when a bill of exchange payable on demand and not known to have been dishonoured is to be deemed overdue.

NOTE.—As to a note payable on demand, which is a continuing security, see Art. 282. As to a cheque, Art. 259. By German Exchange Law, Art. 16, a bill is not deemed to be overdue till the time for protesting it has elapsed. *Bill dishonoured by non-acceptance.*—If a person takes a bill before maturity, but with notice that acceptance has been refused, it is uncertain how far he

¹ *Callow v. Lawrence* (1814), 3 M. & S. at 97, and Chapter VII.

² *Lewis v. Parker* (1836), 4 A. & E. 838 ; Cf. Arts. 17 and 35.

³ *Anderson v. Weston* (1840), 6 Bing. N. C. 296.

⁴ *Bounsall v. Harrison* (1836), 1 M. & W. 611.

⁵ Cf. *Lefley v. Mills* (1791), 4 T. R. 170.

takes it subject to equities which would attach to an overdue bill—*e. g.*, fraud, illegality of consideration, &c. According to *Crossley v. Ham* (1811),¹ such a bill is on the same footing as an overdue bill; but according to *Goodman v. Harvey* (1836),² the holder takes it free from equities of which he has not notice. This latter case has frequently been approved in so far as it lays down the test of *bona fides*, but the exact point at issue has not been raised or discussed. In America, too, the decisions are conflicting. Cf. Art. 191 as to notice of dishonour.

Art. 134. The fact that a bill is overdue is equivalent to notice of all facts relating to it.³ In other respects an overdue bill which has not been discharged is negotiable as if current.⁴

When bill deemed overdue.

Explanation 1.—If there be any fact relating to a bill notice of which would disentitle a holder who took the bill before maturity, the existence of such fact disentitles a holder who takes the bill after maturity irrespective of notice.⁵ Any such disentitling fact is called an “Equity attaching to the bill.”⁶

ILLUSTRATIONS.

1. B., for an illegal consideration, makes a note payable to C. or order. C. indorses it, when overdue, to D. D. cannot sue B.⁷

2. A. draws a bill on B. payable to his own order. B. accepts the bill subject to a certain condition then verbally agreed on. A. indorses the bill, when overdue, to C. C. takes the bill, subject to the aforesaid condition, although he had no notice of it.⁸

Explanation 2.—If the holder who held the bill at its maturity had a good title, the fact that a previous holder had a defective title is immaterial.⁹ (Cf. Art. 87).

¹ 13 East. 498; Cf. dicta in *O’Keefe v. Dunn* (1816), 5 M. & S. 282, Ex. Ch.

² 6 Nev. & Man. 372.

³ *Brown v. Davies* (1789), 3 T. R. at 82, Buller, J.; *Cripps v. Davis* (1843), 12 M. & W. at 165, Parke, B.

⁴ *Leavitt v. Putnam* (1850), 3 New York R. at 497.

⁵ *O’Keefe v. Dunn* (1815), 6 Taunt. at 310 and 315; *Lloyd v. Howard* (1850), 15 Q. B. at 998.

⁶ Cf. *Denters v. Townsend* (1864), 33 L. J. Q. B. at 304, Blackburn, J.

⁷ *Amory v. Mercuether* (1824), 2 B. & C. 573.

⁸ *Holmes v. Kidd* (1858), 28 L. J. Ex. 112, Ex. Ch.

⁹ *Fairclough v. Paria* (1854), 9 Exch. 690.

Negotia-
tion of
overdue
bill.

ILLUSTRATION.

B., for an illegal consideration, accepts a bill drawn on him by A. A. indorses it before maturity to C., who takes it for value and without notice. C. indorses the bill, when overdue, to D. D. acquires a good title, for C. had a good title.¹

Explanation 3.—The existence of a set-off or matter of counterclaim against the holder of a bill is not an equity which attaches to the instrument.²

ILLUSTRATION.

C., the holder of a bill accepted by B., is indebted to B. for arrears of rent. If C. sues B., B. can set off the arrears of rent; but if C. indorses the bill when overdue to D. for value, B. cannot set off C.'s debt against D.

NOTE.—If in the instance given C. indorsed the bill to D. without value, D. would sue as a mere trustee for C.; therefore any defence available against C. would be available against D. also. This applies equally to current bills. Cf. Art. 141.

Explanation 4.—Mere absence of consideration is not an equity which attaches to a bill;³ but if there be an agreement, express or implied, not to negotiate an accommodation bill after maturity, the agreement constitutes an equity which attaches thereto.⁴

ILLUSTRATIONS.

1. B., to accommodate A., accepts a bill drawn on him by the latter, payable one month after date. A., after the bill is overdue, indorses it to C. for value. C. can sue B.⁵

2. B., being willing to accommodate A. with a three months' credit, accepts a bill drawn on him by A. payable three months after date, upon the terms that it is not to be left outstanding

¹ *Chalmers v. Lanion* (1808), 1 Camp. 383.

² *Oulds v. Harrison* (1854), 10 Exch. 572; *Ex parte Swan* (1868), 6 L. R. Eq. 344.

³ *Sturtevant v. Ford* (1842), 4 M. & Gr. 101; *Ex parte Swan* (1868), 6 L. R. Eq. 344. Cf. Arts. 88 and 91.

⁴ *Parr v. Jewell* (1855), 16 C. B. 684, Ex. Ch.; *Carruthers v. West* (1847), 11 Q. B. 143, decided on demurrer, is not to the contrary, see *ratio decidendi*, per Wightman, J.

⁵ *Stein v. Yglesias* (1834), 1 C. M. & R. 565.

after that time. A. discounts the bill with C. when overdue. Negotiation of overdue bill.
C. cannot recover against B.¹

NOTE.—The rule laid down seems obvious. Notice that a bill is an accommodation bill is no defence against a holder for value before maturity, why then should the fact be a defence afterwards? The point, however, has only been settled after long controversy. In New York, an opposite conclusion has been arrived at.²

Explanation 5.—The rights of a person who is not a party to the bill may constitute an equity attaching thereto if they arise out of transactions relating to the instrument.³

ILLUSTRATION.

D., the manager of the "X. Bank," abstracts moneys belonging to the bank, and purchases therewith an overdue bill of exchange accepted by B. This overdue bill he negotiates to E. The "X. Bank," and not E., is entitled to the bill, and if B. becomes bankrupt, the "X. Bank" can prove against his estate.⁴

NOTE.—Payment and other discharges are sometimes spoken of as equities attaching to a bill, but this seems incorrect—they are rather grounds of nullity. That which purports to be a bill is no longer such; it is mere waste paper. Part payment, however, may be regarded as an equity which attaches to a bill.⁵ The position of a holder who takes a bill when overdue, is this: he is a holder with notice. He may or may not be a holder for value, and his rights will be regulated accordingly. He is a holder with notice for this reason: he takes a bill which, on the face of it, ought to have got home and to have been paid. He is therefore bound to make two enquiries: 1. Has what ought to have been done really been done, *i.e.*, has the bill in fact been discharged? 2. If not, why not? Is there any equity attaching thereto? *i.e.*, was the *title* of the person who held it at maturity defective? If his title to the instrument was complete, it is immaterial that for some collateral reason, *e.g.*, a set off, he could not have enforced the bill against some one or more of the parties liable thereon; Cf. Arts. 88, 230. In France, it seems, no distinction is drawn between overdue and current bills; *Nouguier*, §§ 679—680. By German Exchange Law, Art. 16, the indorser of an overdue bill acquires only the rights of his indorser; Cf. the Scotch Law, under 19 & 20 Vict. c. 60, § 16.

¹ Cf. *Parr v. Jewell* (1855), 16 C. B. 684.

² *Chester v. Dorr* (1869), 41 N. Y. 279.

³ *Ex parte Oriental Bank* (1870), 5 L. R. Ch. 358; Cf. *Lee v. Zagury* (1817), 8 Taunt. 114—by analogy *Re Gomersall* (1875), 1 L. R. Ch. D. 137.

⁴ *Id.*, see as to the limits, *Warren v. Haight* (1875), 65 New York R. 171.

⁵ *Graves v. Key* (1832), 3 B. & Ad. at 319; Cf. Art. 233.

After
action
brought.

Art. 135. The fact that a bill has been dishonoured and an action brought thereon does not restrain its negotiability.¹

ILLUSTRATION.

C., the holder of a dishonoured bill accepted by B., commences an action against him. Subsequently C. indorses the bill to D., who has notice of the action. D. can sue B. and recover.

NOTE.—If a bill be transferred, after action brought, to embarrass the defendant, his remedy is by application to the Court.² The Court, too, has full power over costs.

Rights acquired by Negotiation.

Holder's
rights.

Art. 136. The person to whom a bill is negotiated becomes the *de facto* holder (Art. 125) thereof. He thereby acquires the right to sue on the bill in his own name, and the power to further negotiate it.³

NOTE.—The power to negotiate must be distinguished from the right to negotiate. The right to negotiate is an incident of ownership. The power to negotiate is an incident of apparent ownership. Again, the right to sue must be distinguished from the right to recover, that depends on the further question whether the holder is a holder for value (Arts. 83 and 84), and in some cases whether he is also a holder for value without notice (Arts. 85 and 86).

De facto
holder can
give good
title.

Art. 137. The *de facto* holder of a genuine bill, regular on the face of it, who holds it wrongfully or who by parting with it is guilty of a fraud, can negotiate it with a good and complete title to a person who takes it before maturity as a *bonâ fide* holder for value without notice.⁴ Cf. Arts. 92 to 97.

¹ *Denters v. Townsend* (1864), 33 L. J. Q. B. 301; Cf. *Woodward v. Pell* (1868), 4 L. R. Q. B. 55.

² *Id.* at 302, per Cockburn, C. J.

³ Cf. *Crouch v. Crédit Foncier* (1873), 8 L. R. Q. B. at 380—382.

⁴ *Marston v. Allen* (1841), 8 M. & W. at 504, see per Alderson, B., as to the principle.

Art. 138. An irregularity patent on a bill is equivalent to notice of any defect that may be behind it, and deprives the holder of the protection afforded to a *bonâ fide* holder for value without notice.¹ Patent irregularity.

ILLUSTRATIONS.

1. A., who is in possession of a blank acceptance signed by B., fills it up as a bill for 100*l.* in the presence of C., inserting his own name as drawer and C.'s name as payee. A. transfers the bill to C. for value. If it appears that A. had no authority to fill up the bill, or that his authority had been revoked, C. cannot recover against B.

2. A. draws a bill on B. payable to his own order. B. accepts. It is afterwards arranged that the bill shall be cancelled. B. accordingly tears it in half. A. subsequently picks up the pieces, joins them together, and indorses the bill to C., who takes it for value and without notice. If the bill is so torn that it appears to have been divided for safe transmission by post, C. can recover; but if it was so torn as to shew an intention to cancel it, C. cannot recover.²

NOTE.—The rule as to overdue bills (Art. 134) is probably a deduction from the same principle. See, too, Art. 74 as to signatures “per proc.” and Art. 250 as to alterations. See the distinction between latent and patent defects observed on by Lord Ellenborough and Bayley, J.³

Art. 139. No title can be made to a bill through the indorsement of a fictitious or non-existing person unless the party sued is estopped from setting up the fact. Cf. Art. 81. Fictitious payee and indorser.

ILLUSTRATIONS.

1. A. draws a bill on B. payable to C.'s order. C. is a fictitious person. B. accepts in ignorance of this fact. A. then indorses the

¹ *Colson v. Arnot* (1874), 57 New York R. 253; Cf. *Angle v. N. W. Ins. Co.* (1875), 2 Otto at 342, Sup. Ct. U. S.

² *Hatch v. Searles* (1854), 2 Sm. & G. 147, *Stanway's case*; see, too, *Conway's case* affirmed, 24 L. J. Ch. 22, and *Aude v. Dixon* (1851), 6 Exch. 869.

³ *Ingham v. Primrose* (1859), 7 C. B. N. S. 82; Cf. *Scholey v. Ramsbottom* (1810), 2 Camp. 485; *Redmayne v. Burton* (1860), 2 L. T. N. S. 324.

⁴ *Dunn v. O'Keefe* (1816), 5 M. & S. at 286—289; Cf. *Ex parte Dixon* (1876), 4 L. R. Ch. D. at 136 (C. A.).

Fictitious bill in blank in C.'s name and discounts it with D., who has notice.
payee and D. cannot sue B.¹
indorser.

2. A. draws a bill on B. payable to C.'s order. C. is a fictitious person. B. knowing this accepts. A. indorses the bill in blank in C.'s name and it is negotiated to D., a *bonâ fide* holder for value without notice. D. can sue B.²

3. B. is indebted to C. By arrangement between them a bill is drawn in the name of A., a deceased person, on B., payable to drawer's order. B. accepts, and the bill is indorsed in A.'s name to C. C. can sue B.³

4. A bill purporting to be drawn by A. on B., payable to C.'s order and indorsed by C. in blank is held by D. X. accepts it *suprà protest* for A.'s honour. D., who is a *bonâ fide* holder, sues X. It turns out that A.'s signature was forged, and that C. is a fictitious person. X. is estopped from setting up these facts.⁴

5. B., at the request of X., makes a note payable to C.'s order. C. is a fictitious person, but B. does not know this. X. indorses the note in C.'s name and it is negotiated to D., a *bonâ fide* holder for value without notice. D. can sue B.⁵

NOTE.—As to the effect of the drawee being a fictitious person, see Art. 2. In France the signature of a fictitious person on a bill constitutes a "supposition de nom," and renders the instrument invalid as a bill in the hands of all parties with notice.⁶ The signature of a fictitious person must be distinguished from (a) the signature of a real person who uses a fictitious name (Cf. Art. 71, Expl. 2), and (b) the false signature of a real person (Cf. Art. 81).

Right to duplicate of lost bill. Art. 140. The drawer of an inland bill of exchange payable after date,⁷ which is lost or has miscarried before maturity, is bound, on request, to give another

¹ *Hunter v. Jeffery* (1797), Peake Ad. Ca. 146; Cf. *Bennet v. Farnell* (1807), 1 Camp. 129 and 180.

² *Gibson v. Minet* (1791), 1 H. Bl. 569, H. L.; Cf. *Gibson v. Hunter* (1794), 2 H. Bl. 288, H. L.

³ *Asphitel v. Bryan* (1863), 32 L. J. Q. B. 91; per Crompton, J., an estoppel on evidence. Affirmed Ex. Ch. 33 L. J. Q. B. 328; per cur. an estoppel by agreement.

⁴ *Phillips v. Im Thurn* (1865), 18 C. B. N. S. 694, on demurrer; see 1 L. R. C. P. 468, on evidence.

⁵ *Lane v. Kreckle* (1867), 22 Iowa 477; Cf. *Cooper v. Meyer* (1830), 10 B. & C. 468; *Becman v. Duck* (1843), 11 M. & W. 251; *Schultz v. Astley* (1836), 2 Bing. N. C. 544.

⁶ *Nouguier*, §§ 277 and 284—288; Cf. French Code, Art. 112; Italian Code, Art. 198.

⁷ See *vide Rhodes v. Moore* (1850), 14 Jur. 800. Cheque.

bill of the same tenor, "the person to whom it is so delivered giving security, if demanded, to the said drawer, to indemnify him against all persons whatsoever, in case the said bill so alleged to be lost or miscarried shall be found again."¹

NOTE.—This remedy is very inadequate. See the provisions of the Foreign Codes, Art. 25 n. As to suing on a lost bill, see Art. 144.

Rights of Action and Proof.

Art. 141. The *de facto* holder of a bill is entitled to maintain an action thereon unless it is shewn that he holds the bill adversely to the true owner.²

De facto
holder's
right of
action.

Explanation 1.—It is immaterial that the holder never had any interest in the bill,³ or that he has parted with his interest therein.⁴

Explanation 2.—When the holder of a bill sues as agent for another person, or when he sues wholly or in part for the benefit of another person, any defence or set-off available against that person is available *pro tanto* against the holder.⁵ Cf. Art. 88.

ILLUSTRATIONS.

1. C. the holder of a bill indorses it to D. for collection. D. can sue on it, but any defence available against C. is available against D.⁶

¹ 9 & 10 Will. III., c. 17, § 3; *Rhodes v. Morse* (1850), 14 Jur. 800, cheque; Cf. *Walmesley v. Child* (1749), 1 Ves. Sr. at 335, and *passim*, *Thackray v. Blackett* (1812), 3 Camp. 164.

² *Jones v. Broadhurst* (1850), 9 C. B. 173; *Agra Bank v. Leighton* (1866), 2 L. R. Ex. at 63—65. See Art. 125, *de facto* holder defined.

³ *Law v. Parnell* (1859), 7 C. B. N. S. 282.

⁴ *Williams v. James* (1850), 15 Q. B. 498; *Poirier v. Morris* (1853), 2 E. & B. 89. Cf. *Megrath v. Gray* (1874), 9 L. R. C. P. 216.

⁵ *Lee v. Zagury* (1817), 8 Taunt. 114; *Royce v. Barnes* (1846), 52 Massachusetts. 276; *Agra Bank v. Leighton* (1866), 2 L. R. Ex. 56; *Re Anglo-Greek Navigation Co.* (1869), 4 L. R. Ch. 174; *Pothier*, No. 41; Cf. *Beechervaise v. Lewis* (1872), 7 L. R. C. P. 372.

⁶ *De la Chaumette v. Bank of England* (1829), 9 B. & C. 208, as explained by *Goodwin v. Roberts* (1875), 10 L. R. Ex. at 164, Ex. Ch.

De facto
holder's
right of
action.

2. D. is the holder of a dishonoured bill for 100*l.* indorsed by C. C. pays D. 60*l.* D. sues the acceptor. As to 60*l.* D. sues as trustee for C., and only as to 40*l.* on his own account. As regards 60*l.* any set off which the acceptor may have against C. is equally available against D.¹

Action on
bill
payable
specially.

Art. 142. Subject to Arts. 98—102, when a bill is payable to a particular person or persons, or to his or their order, an action thereon must be brought in the name of such person or persons.²

ILLUSTRATIONS.

1. A bill is specially indorsed to the firm of "D. & Co." An action on it must be brought in the name of the firm. The managing partner cannot sue on it in his own name.

2. A bill is specially indorsed to D., a partner in the firm of X. & Co., in payment of a debt due to the firm. An action on it must be brought in D.'s name, and not in the name of the firm.³

NOTE.—In the case given in Illust. 1, the managing partner might indorse the bill in the firm's name to himself and then sue. Cf. Art. 119, n., as to striking out indorsements.

Action on
bill pay-
able to
bearer.

Art. 143. Subject to Art. 141, when a bill is payable to bearer an action thereon may be brought in the name of any person who has either the actual or the constructive possession thereof.

ILLUSTRATIONS.

1. C., the holder of a bill, indorses it in blank to D. to collect it for him. Either C. or D. may sue the acceptor.⁴

2. A bill accepted by B. is indorsed in blank by C., D., E. and F. bring an action on the bill against B. They can recover, although there is no evidence to shew that they are partners, or what the nature of their joint interest is.⁵

¹ *Thornton v. Maynard* (1875), 10 L. R. C. P. 695.

² *Attwood v. Rattenbury* (1822), 6 Moore at 583; *Pease v. Hirst* (1829), 10 B. & C. 122.

³ *Bawden v. Howell* (1841), 3 M. & Gr. 638.

⁴ *Clerk v. Pigot* (1699), 12 Mod. 193; Cf. *Stone v. Butt* (1834), 2 Cr. & M. 416.

⁵ *Ord v. Portal* (1812), 3 Camp. 239; Cf. *Rordans v. Leach* (1816), 1 Stark. 446; *Low v. Copestake* (1828), 3 C. & P. 800.

3. A bill is indorsed in blank to a firm. Any one of the partners may bring an action on it in his own name.¹

Action on
bill pay-
able to
bearer.

4. A bill indorsed in blank is handed to the manager of a company in payment of a debt due to the company. The manager may sue on it in his own name.²

5. A bill indorsed in blank is given to D.'s attorney, who commences an action on it against the acceptor in D.'s name. D. knows nothing of the matter, but after the action has proceeded some way he is told of it, and then gives his consent. D. can maintain the action.³

6. D., the holder of a bill indorsed in blank, does not wish to sue on it in his own name. He accordingly asks E. to sue on it. E. consents. E. gets a copy of the bill and it is agreed that he shall have the original when wanted. E. commences an action against the acceptor, and after action brought he gets the bill. E. cannot maintain this action, for at the time he began it he had neither the actual nor the constructive possession of the bill.⁴

Explanation.—A constructive possession jointly with others is sufficient to entitle the possessor to sue alone.

ILLUSTRATION.

A note payable to bearer is handed to the solicitor of a loan society in payment of a debt due to the society. D., a member of the society, instructs the solicitor to commence an action on it in his (D.'s) name against the maker. D. can maintain this action.⁵

NOTE.—As to constructive possession, see Art. 53 n.

Art. 144. In an action founded on a bill “the Court or a judge may order that the loss of such instrument shall not be set up, provided an indemnity is given to the satisfaction of the Court or judge, or

Action on
lost bill.

¹ *Lindley*, p. 302; *Attwood v. Rattenbury* (1822), 6 Moore 579; *Wood v. Connop* (1843), 5 Q. B. 292, as to joint holders; *Conover v. Earl* (1868), 26 Iowa R. 168, as to holders in common.

² *Law v. Parnell* (1859), 7 C. B. N. S. 282.

³ *Ancona v. Marks* (1862), 31 L. J. Ex. 163.

⁴ *Emmet v. Tottenham* (1853), 8 Exch. 884; *Cf. Olcott v. Rathbone* (1830), 5 Wend. 490, New York.

⁵ *Jenkins v. Tongue* (1860), 29 L. J. Ex. 147.

Action on lost bill. “a master, against the claims of any other person upon “such negotiable instrument.”¹ Cf. Art. 165.

Holder's right of proof. Art. 145. When a party to a bill becomes bankrupt the holder, who could have maintained an action against such party if he had remained solvent, can prove against his estate in bankruptcy.²

Explanation.—Any defence, set-off, or counter-claim available in an action is available against a proof.³

NOTE.—In one respect the right of proof is more extensive than the right of action. An action can only be brought to recover a debt or which is due, but under Bankruptcy Act 1869, § 31, a future or contingent debt may be proved; therefore if the acceptor of a bill not yet due becomes bankrupt the holder may prove—so, too, the holder of an accepted bill may prove if the drawer or an indorser becomes bankrupt.⁴ But as regards amount, the right to prove is narrower than the right to sue. The amount for which a holder can prove is limited by rules peculiar to bankruptcy, such as the rules relating to double proof⁵ and creditors holding security.⁶ These it is beyond the provision of the present work to discuss.

¹ 17 & 18 Vict. c. 125, § 87. Cf. *King v. Zimmerman* (1871), 6 L. R. C. P. 466, and see *Wright v. Maidstone* (1855), 24 L. J. Ch. 624.

² Cf. 32 & 33 Vict. c. 71, § 31; Cf. *Re Charles* (1873), 8 L. R. Ch. at 537.

³ See e.g. *Rhode v. Proctor* (1825), 4 B. & C. 517, want of notice of dishonour; *Ex parte Mannere* (1812), 1 Rose. 68, want of a stamp; Cf. *Jones v. Gordon* (1877), 2 L. R. Ap. Ca. 627, H. L.

⁴ Cf. *Starey v. Barnes* (1806), 7 East. 435.

⁵ See e.g. *Re Douglas* (1872), 7 L. R. Ch. 490, foreign bankruptcy.

⁶ See e.g. *Re Howe* (1871), 6 L. R. Ch. 833, conditional acceptance.

CHAPTER V.

DUTIES OF THE HOLDER.

Art. 146. When a party to a bill is discharged from his liability thereon by reason of the holder's omission to perform his duties as to presentment for acceptance or payment, protest, or notice of dishonour, such party is also discharged from liability on the consideration for which the bill was given.¹

Effect on
considera-
tion of
omission
of holder's
duties.

NOTE.—The holder's omission, without lawful excuse, to perform his duties with reference to a bill is commonly called "laches." As the Crown can do no wrong, so also it cannot be guilty of laches.

Presentment for Acceptance.

Art. 147. Presentment for acceptance is necessary in the case of a bill of exchange payable after sight. In other cases, in the absence of express stipulations, it is optional.²

When
necessary
or optional.

ILLUSTRATION.

A. draws a bill on B. payable at the "X. bank" three months after date. Presentment to B. for acceptance is not necessary. It is (probably) sufficient to present the bill for payment when due at the X. bank.

¹ *Byles*, pp. 215 and 292, and Arts. 160, 190; *Cf. Crowe v. Clay* (1854), 9 Exch. 604.

² *Ramchurn v. Radakissen* (1854), 9 Moore P. C. at 65, 66; *Thomson*, p. 276; *German Exchange Law*, Art. 19 and 24.

³ *Walker v. Stetson* (1869), 2 Amer. R. 405.

When
necessary
or op-
tional.

NOTE.—“After sight” means after acceptance (Art. 20), but “at sight” means “on demand” (Art. 18). Suppose A. draws a bill on B. in Liverpool, payable in London, but not saying where, is not presentment for acceptance necessary? It would be so in France, *Nouguier*, § 1068. By German Exchange Law, Art. 24, when a bill is drawn payable at the house of a third person the drawer may insert a stipulation requiring presentment for acceptance. In France it seems the drawer or indorser of any bill may insert such a stipulation, *Nouguier*, §§ 464—469.

Due pre-
sentment
for accep-
tance.

Art. 148. Due presentment for acceptance is a condition precedent to the exercise by the holder of the rights which arise on dishonour by non-acceptance. (Cf. Art. 157.)

Explanation.—“Due presentment for acceptance” means presentment in accordance with Arts. 149 to 154.

NOTE.—Subject to Art. 150, Expl. 3, the question of due presentment is only material when acceptance cannot be obtained. If acceptance is obtained the informality of the presentment is immaterial. There is very little English authority on the subject, and it is clear that rules as to presentment for payment do not apply in their entirety to presentment for acceptance. Cf. Art. 155, n.

By whom.

Art. 149. Any person in possession of a bill of exchange may present it for acceptance.¹

NOTE.—The Court of Appeal in Dec. 1876, dissolved an injunction restraining the drawee from accepting a bill because the holder had obtained it by a fraud. Bills are constantly forwarded undorsed to an agent for him to procure acceptance. An agent must exercise due diligence in presenting for acceptance. He is liable to his principal for damage resulting from his negligence.²

Time for
presenting
bill after
sight.

Art. 150. The holder of a bill of exchange payable after sight is bound either to negotiate it away or to present it for acceptance within a reasonable

¹ *Nouguier*, § 462; German Exchange Law, Art. 18; *Thomson*, p. 282; Cf. *Morrison v. Buchanan* (1833), 6 C. & P. 18, and Art. 28 as to the parts of a set.

² As to date bills, *Pothier*, No. 128; *Nouguier*, § 462; *Allen v. Suydam* (1838), 20 Wend. 321, New York. As to sight bills, *Bank of Van Diemens Land v. Victoria Bank* (1871), 3 L. R. P. C. at 542. Cf. Art. 164, n.

time. If he omit to do so the drawer and prior indorsers are discharged.¹

Time for
presenting
bill after
sight.

Explanation 1.—Reasonable time is a mixed question of law and fact.²

Explanation 2.—In determining what is a reasonable time regard is to be had to the nature of the bill, the usage of trade with respect to similar bills, and the circumstances of the particular case looking to the interests both of the holder and the drawer.³

ILLUSTRATIONS.

1. A. in Windsor draws a bill on B. in London, payable one month after sight. The holder keeps it four days before presenting it for acceptance. It is then dishonoured. This may not be an unreasonable delay.⁴

2. A. in London draws a bill on B. in Rio, payable sixty days after sight. The payee holds it back for four months, during which time Rio bills are at a discount. He then negotiates it. This may not be an unreasonable delay.⁵

3. A. in Newfoundland draws a bill (*in a set*) on B. in London, payable ninety days after sight. The payee holds it back for two months and then forwards it for presentment. No reason for holding back is shewn. This may be an unreasonable delay.⁶

4. A. in Calcutta draws a bill on B. in Hong Kong payable sixty days after sight. The holder retains it for five months, during which time China bills are at a discount. He then negotiates it. This may be an unreasonable delay.⁷

Explanation 3.—When there is unreasonable delay the drawer and prior indorsers are (probably) discharged, although the bill when presented is accepted.⁸

¹ *Mellish v. Rawdon* (1832), 9 Bing. 416; *Ramchurn v. Radakissen* (1854), 9 Moore P. C. 46; Cf. *Goupy v. Harden* (1816), 7 Taunt. at 163. Cf. Art. 146.

² *Id.*

³ *Id.*; and *Wallace v. Agry* (1827), 4 Mason 336, Sup. Ct., U. S., Story, J.

⁴ *Fry v. Hill* (1817), 7 Taunt. 395; Cf. *Shute v. Robins* (1828), 2 C. & P. 80.

⁵ *Mellish v. Rawdon* (1832), 9 Bing. 416.

⁶ *Straker v. Graham* (1839), 4 M. & W. 721. Cf. Art. 28.

⁷ *Ramchurn Mullick v. Radakissen* (1854), 9 Moore P. C. 46; Cf. *Godfray v. Coulman* (1859), 13 Moore P. C. 11.

⁸ *Straker v. Graham* (1839), 4 M. & W. 721,

Time for
presenting
bill after
sight.

ILLUSTRATION.

A. draws a bill on B. payable to C. three months after sight. C. holds it back for an unreasonable time. He then presents it and it is accepted. Before it is due the acceptor fails. A. is discharged.

NOTE.—*Qu.* What is the liability of a person who retains a bill unreasonable time and then negotiates it without indorsement? Again, does negotiation within a reasonable time, *toties quoties*, excuse presentment, or is there any limit? By German Exchange Law, Art. 19, when a bill payable after sight does not fix a time for presentment, it must be presented within two years of its date. By French Code, Art. 160, as amended by the law of May 3, 1862, bills payable after sight are divided into classes according to the places where they are drawn and payable, and definite limits of time for presentment are fixed, varying from three months to one year—*e.g.*, bill drawn in Paris on London must be presented for acceptance within three months. The effect of this conflict of laws has not been considered.

Time for
presenting
other bills.

Art. 151. A bill of exchange, payable otherwise than at a fixed time after sight, may be presented for acceptance at any time before maturity.¹

NOTE.—In the case of a bill which is due or payable on demand, presentment for acceptance is merged in presentment for payment. When a bill is presented for payment, the drawee instead of paying it, often accepts it payable at his bankers. This is in effect a payment by cheque,² which the holder might refuse to take. In New York it is held that if a bill payable after date be presented on the day it is due and dishonoured, it is immaterial whether it is treated as dishonoured by non-acceptance or non-payment.³ Considering the difference in the rules which govern the two kinds of presentment this might have important consequences. See also Art. 34.

Day and
hours.

Art. 152. Presentment for acceptance must (probably) be made on a business day, and at a reasonable hour.⁴

Explanation 1.—When the day on which a bill of exchange should be presented or received for accept-

¹ *O'Keefe v. Dunn* (1815), 6 Taunt. at 307; German Exchange Law, Art. 18; *Nougues*, § 456.

² *Cf. Bishop v. Chitty* (1742), 2 Stra. 1195.

³ *Plato v. Reynolds* (1863), 27 New York R. 586.

⁴ *Chitty*, p. 199; *Byles*, p. 182. No decision. *Cf. Art. 163, and Startup v. Macdonald* (1843), 6 M. & Gr. at 624.

ance is a bank holiday it is to be presented on the next business day.¹ Day and hours.

Explanation 2.—When the drawee is a trader reasonable hours mean the ordinary business hours of his trade.²

ILLUSTRATION.

Bill drawn on a banker is presented for acceptance after banking hours and the bank is found closed. The bill cannot be treated as dishonoured.

NOTE.—Probably if presentment was made on a non-business day, or at an unreasonable hour, and the drawee refused acceptance on some other ground, the bill might be treated as dishonoured.

Art. 153. Presentment for acceptance must be made to the drawee personally, or to some person who has authority to accept or refuse acceptance on his behalf.³ To whom and where.

Explanation 1.—When a bill of exchange is drawn payable at the house or place of business of some person other than the drawee, presentment for acceptance at such house or place is not a presentment to the drawee.⁴

Explanation 2.—When the drawee is dead presentment must (perhaps) be made to his executor or administrator.⁵

NOTE.—The law on this point is not yet settled.

Art. 154. The person who presents a bill of exchange for acceptance must deliver it up to the drawee if required so to do. The drawee is entitled to retain it for twenty-four hours, but after the ex- Drawee may retain bill twenty-four hours.

¹ Bank Holidays Act, 1871, 34 & 35 Vict. c. 17, § 2.

² Cf. *Nelson v. Fetteral* (1836), 7 Leigh at 194, and Art. 163.

³ *Cheek v. Roper* (1804), 5 Esp. 175; *Byles*, p. 182.

⁴ *Chitty*, p. 196; Cf. Art. 155, n.

⁵ Cf. *Smith v. N. S. Wales Bank* (1872), 8 Moore P. C. N. S. at 461—462, per Mellish, L. J. *Daniel*, § 458. French Code, Art. 163.

Drawee may retain bill twenty-four hours. piration of this time he must re-deliver it accepted or un-accepted.¹

Explanation 1.—In reckoning the twenty-four hours non-business days must be excluded.²

Explanation 2.—If after the expiration of the twenty-four hours the drawee refuses to re-deliver the bill it must be treated as dishonoured in order to preserve the holder's right of recourse against antecedent parties.³

Presentment for acceptance, when excused. Art. 155. Presentment for acceptance is excused, and a bill of exchange may be treated as dishonoured by non-acceptance.

1. When the drawee is discovered to be a fictitious person⁴ or (perhaps) a person not having capacity to contract.⁵

2. (Probably) when, after the exercise of reasonable diligence, presentment cannot be effected.⁶

Explanation.—The fact that the holder has reason to believe that the bill on presentation will be dishonoured does not dispense with the necessity for presentment.⁷

NOTE.—In *Anon* (1700), 1 *Ld. Raym.* 743, where the drawee had absconded, the bill was merely protested for better security, and at maturity it was again protested for non-payment. This seems to be the only case in point, but it can hardly be a binding precedent now that it is settled that a right of action at once arises on dishonour by non-acceptance (Art. 157). At the same time it is clear that considerations applicable to presentment for payment

¹ *Bank of Van Diemens Land v. Victoria Bank* (1871), 3 *L. R. P. C.* at 542—543; *Story*, § 237; *French Code*, Art. 125.

² *Id.* see at 546—547, as to the effect of a short day—*e.g.*, Saturday.

³ *Id.*; *Cf. Ingram v. Forster* (1805), 2 *Smith* 242; see, too, *German Exchange Law*, Art. 20.

⁴ *Cf. Smith v. Bellamy* (1817), 2 *Stark.* 223.

⁵ *Byles*, p. 187; no decision in point.

⁶ *Byles*, p. 183; *Chitty*, p. 199; *Brooks' Notary*, 4th ed., p. 79; no decision in point. *Cf. Smith v. N. S. Wales Bank* (1872), 8 *Moore*, P. C. N. S. at 461—463.

⁷ *Robinson v. Ames* (1822), 20 *John.* at 149, *New York*; *Ex parte Tondeur* (1867), 5 *L. R. Eq.* at 165. *Cf. Art.* 168.

do not apply in their entirety to presentment for acceptance. Speaking generally, presentment for acceptance must be personal, while presentment for payment must be local. A bill must be presented for payment where the money is. Any one can hand then over the money (Cf. Art. 167). A bill must be presented for acceptance to the drawee himself, for he has to write the acceptance; but the place where it is presented to him is comparatively immaterial, for all he has to do is to take the bill (Cf. Art. 154). Again (except in the case of demand drafts) the day for payment is a fixed day, but the drawee cannot tell on what day it may suit the holder to present a bill for acceptance. If the drawee be a trader, it is clear that the bill should be presented for acceptance at his place of business, but suppose the drawee is not there, what further steps must be taken? What diligence must be used before the bill can be treated as dishonoured? The immediate right of action which arises on non-acceptance is an exceptional right.¹ How far ought it to be favoured? It is one thing to excuse delay where presentment is necessary, another to treat a bill as dishonoured where presentment is optional.

Art. 156. A bill of exchange is "dishonoured by "non-acceptance" (1) when it is duly presented for acceptance, and an acceptance in due form is refused or cannot be obtained, or (2) when presentment for acceptance is excused, and the bill is not accepted.

Art. 157. Subject to Art. 48, when a bill of exchange is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, provided that the proper proceedings on dishonour be taken.

ILLUSTRATION.

A. draws a bill on B. payable to C. three months after date. Two days after it is drawn C. presents the bill to B. for acceptance. B. dishonours it. C. can at once sue A. on the bill. He need not wait till it matures.

NOTE.—This rule seems peculiar to English and American law. On the continent the holder can only protest the bill for non-acceptance and demand security from the drawer and indorsers. When the bill matures he must again present it for payment. His

¹ Cf. Art. 157, n., and *Dunn v. O'Keefe* (1816), 5 M. & S. at 289, Abbot, C.J.

² *Whitehead v. Walker* (1842), 9 M. & W. at 516; *Watson v. Tarpley* (1855), 20 How. at 519 Sup. Ct., U. S.

Consequence of dishonour by non-acceptance. right of action arises on non-payment.¹ The effect of this conflict of laws has not been judicially considered.

Explanation.—The holder of a bill of exchange which has been dishonoured by non-acceptance may re-present it to the drawee for acceptance or payment, though he is not bound so to do.²

NOTE.—Suppose a bill is presented for acceptance and dishonoured. The holder gives no notice of dishonour, but re-presents the bill a few days after and gets it accepted. It is dishonoured by non-payment. Are the drawer and indorsers discharged as regards such holder? A subsequent holder without notice would not be affected (Art. 191). The proper course is to give notice of dishonour, and at the same time to intimate an intention to re-present.

Duties as to Qualified Acceptances.

Holder's right to general acceptance.

Art. 158. The holder of a bill of exchange is entitled to have it accepted generally. If a general acceptance be refused and a qualified acceptance is offered or given, the bill may be treated as dishonoured.³

NOTE.—As to general and qualified acceptances, see Arts. 38, 39. By German Exchange Law, Art. 20, if the acceptor refuse to date his acceptance on a bill payable after sight it may be treated as dishonoured.

Notice of qualified acceptance.

Art. 159. If the holder of a bill of exchange elect to take a qualified acceptance, he must give notice of the qualification to antecedent parties.⁴

NOTE.—As to the effect of the notice when given, see Art. 40. A foreign bill should be protested as to the variation. The notice given must be notice of qualification, not notice of dishonour. If the holder give notice of dishonour, he cannot take advantage of the acceptance.⁵

¹ French Code, Art. 119, 120; German Exchange Law, Art. 25—28.

² *Hickling v. Hardey* (1817), 7 Taunt. 312; Art. 34.

³ *Boehm v. Garcias* (1808), 1 Camp. 425; *Gammon v. Schmoll* (1814), 5 Taunt. at 353; Cf. French Code, Art. 124; German Exchange Law, Art. 22.

⁴ Cf. *Sebag v. Abithol* (1816), 4 M. & S. at 466, Bayley, J.; *Whitehead v. Walker* (1842), 9 M. & W. at 509.

⁵ Cf. *Bentinck v. Dorrien* (1805), 6 East. 199.

Presentment for Payment to charge Drawer and Indorsers.

Art. 160. Due presentment for payment, unless excused,¹ is a condition precedent to the liability of the drawer or indorser of a bill of exchange.² The omission by the holder to make due presentment deprives him of any right of action on the consideration, as well as of his right of recourse on the instrument.³

Explanation.—Due presentment for payment means presentment in accordance with Arts. 161 to 167.

NOTE.—The rules applicable to the drawer or indorser of a bill apply equally to the indorser of a note⁴ or cheque, but they do not apply to the maker of a note, who is sometimes called the drawer (Art. 286); and they are modified as to time as regards the drawer of a cheque (Art. 258). See Art. 155, n., presentment for payment and presentment for acceptance contrasted. According to French Code, Art. 161, a bill must be presented for payment on the day it falls due, but it seems no penalty follows the omission to present, provided the bill be duly protested on the following day: *Nouguier*, § 1076. Practically, then, protest is substituted for presentment for payment. Again, a distinction is drawn between the drawer and the indorsers. Omission duly to protest discharges the indorsers, but the drawer is not discharged unless he shows affirmatively that the drawee or acceptor had funds to meet the bill.⁵

Art. 161. A bill payable at a future time (Art. 19) must be presented for payment on the day that it falls due,⁶ as determined by Art. 20.

At what time bill payable *in futuro*.

Art. 162. A bill of exchange payable on demand (Art. 18) must be presented for payment within a reasonable time.⁷

Bill of exchange payable on demand.

¹ Cf. Arts. 200, 201, as to excuses.

² Cf. *Rowe v. Young* (1820), 2 Bligh. H. L. at 467; German Exchange Law, Arts. 41 and 91.

³ *Soward v. Palmer* (1818), 8 Taunt. 277; *Peacock v. Purcell* (1863), 32 L. J. C. P. 266.

⁴ Cf. *Gibb v. Mather* (1832), 2 Cr. and J. at 262—263, Ex. Ch.

⁵ French Code, Arts. 117 and 170; *Nouguier*, § 1147—1165.

⁶ *Philpot v. Bryant* (1828), 4 Bing. at 720; French Code, Art. 161; see e.g., *Wiffen v. Roberts* (1795), 1 Esp. 262, presentment on second day of grace; *Prideaux v. Collier* (1817), 2 Stark. 58, presentment on day after maturity.

⁷ *Byles*, p. 209; *Story*, § 325; *National Bank v. Second Erie Bank* (1869), 63 Pennsyiv. 404.

Bill of
exchange
payable on
demand.

NOTE.—There seems to be no English decision in point. The cases have arisen either on cheques or notes. A cheque is intended for prompt presentment and not for negotiation (Art. 254), so it is doubtful how far the cases on cheques apply, even to an inland bill. A note, on the other hand, is a continuing security (Art. 285). Under the continental codes, a bill payable at sight must be presented for payment within the same limit of time that a bill payable after sight must be presented for acceptance. This seems the true principle; see Art. 150 on this point.

Reason-
able hour.

Art. 163. Presentment for payment must be made during reasonable hours.¹

Explanation 1.—When the payor is a trader, and the bill is payable at his place of business, reasonable hours mean the ordinary business hours of his trade.²

ILLUSTRATIONS.

1. Bill accepted payable at a bank. It must be presented during banking hours.³

2. Bill drawn on a merchant is presented for payment at his counting-house at 6.30. This may be a reasonable hour.⁴

3. Bill payable at the private residence of the payor is presented for payment at 8 p.m. This is a reasonable hour.⁵

NOTE.—The reasonableness of the hour must depend on whether the payor's place of business is also his residence. He is not bound to stay at his place of business after the usual hour. When a bill is payable at the payor's residence, probably a presentment up to bed-time would be sufficient. In America a presentment at 8 a.m. and 11 p.m. have been held unreasonable: *Daniell*, p. 448.

Explanation 2.—When presentment is made at an unreasonable hour, but payment is refused on some other ground, the bill is deemed to have been duly presented.⁶

¹ *Wilkins v. Jadis* (1881), 2 B. & Ad. 188.

² *Elford v. Teed* (1818), 1 M. & S. 28; Cf. *Startup v. Macdonald* (1843), 6 M. & Gr. at 624; *Allen v. Edmundson* (1848), 2 Exch. at 728.

³ *Id.*; and *Parker v. Gordon* (1806), 7 East. 385; Cf. *Whitaker v. Bank of England* (1835), 1 O. M. & R. 750, banker's duty to pay.

⁴ *Morgan v. Davison* (1815), 1 Stark. 114; Cf. *Barclay v. Bailey* (1810), 2 Camp. 527, 8 p.m. Have business hours changed since then?

⁵ *Triggs v. Newnham* (1825), 10 Moore 249; *Wilkins v. Jadis* (1881), 2 B. & Ad. 188.

⁶ *Henry v. Lee* (1814), 2 Chitty, 124; *Garnett v. Woodcock* (1817), 6 M. & S. 44; Cf. *Salt Spring Bank v. Burton* (1874), 58 New York R. 430.

Art. 164. Presentment for payment must be made *By whom.* by the holder of a bill, or by some person authorized to receive the money on his behalf.¹ Cf. Art. 236.

Exception.—Presentment through the post-office may be sufficient.²

NOTE.—*Duties of Agent.*—A collecting agent is, of course, liable to his principal if he does not use due diligence in presenting a bill for payment and take the proper proceedings on dishonour.³ The same rule applies to a pledgee or person holding a bill as collateral security.⁴ An agent is, as a rule, responsible for the default of a sub-agent whom he employs; but in some of the American States an exception is admitted when the sub-agent is a notary, on the ground that he is a public officer.⁵

Art. 165. The person who presents a bill for pay- *Bill must*
ment must produce it, and must be ready and willing *be pro-*
to deliver it up on receiving payment.⁶ *duced.*

NOTE.—If the bill be lost a copy should be presented—but *qu.* as to the sufficiency of this? A protest it seems can be made on a copy.⁷ The provision that the loss of a bill shall not be set up in an action if an indemnity be given (Art. 144) hardly seems to meet the present case. As to the parts of a set, see Arts. 27 and 29.

Art. 166. When a bill is made payable at a parti- *At what*
cular place by the drawer in his draft, or by the *place.*
acceptor in his acceptance, presentment for payment must be made at that place.⁸

ILLUSTRATIONS.

1. A. draws a bill on B. in Liverpool, payable in London. B. accepts it, payable at the "X. Bank," London. Presentment must

¹ *Leftley v. Mills* (1791), 4 T. R. at 175; *Walker v. Macdonald* (1848), 2 Exch. at 532; *Windham Bank v. Norton* (1852), 22 Connecticut R. 214; Cf. *Cole v. Jessop* (1854), 10 New York R. at 100.

² *Heywood v. Pickering* (1874), 9 L. R. Q. B. 428 at 432; Cf. *Prideaux v. Criddle* (1869), 4 L. R. Q. B. at 461; *Windham Bank v. Norton* (1852), 22 Connecticut R. 214.

³ Cf. *Lysaght v. Bryant* (1850), 19 L. J. C. P. at 160, Maule, J., and Art. 149.

⁴ *Peacock v. Purcell* (1863), 32 L. J. C. P. 266.

⁵ *Daniell*, § 343; *Parsons*, p. 480.

⁶ Cf. *Hansard v. Robinson* (1827), 7 B. & C. at 94; *Griffin v. Weatherby* (1868), 3 L. R. Q. B. at 760—761, and Arts. 205, 207.

⁷ *Dehors v. Harriot* (1691), 1 Show. 163; *Pothier*, No. 145; *Brooks' Notary*, 4th ed., pp. 137 and 217.

⁸ *Gibb v. Mather* (1832), 2 Cr. & J. 254 at 262, Ex. Ch.; Cf. *Boydell v. Harkness* (1846), 3 C. B. at 171, Maule, J.; German Exchange Law, Art. 43.

At what place. be made at the "X. Bank." Presentment to B. in Liverpool is not sufficient to charge the drawer.¹

2. A. draws a bill on B. generally. B. accepts it, payable at the "X. Bank." This is a general acceptance (Art. 39); but presentment at the "X. Bank" is necessary in order to charge the drawer and indorsers.²

Explanation 1.—When a bill is made payable at a bank in a town where there is a clearing-house, presentment through the clearing-house is a sufficient presentment at that bank.³

Explanation 2.—When a bill of exchange contains the address of the drawee, and no place of payment is specified, it is payable at such address.⁴

NOTE.—Presentment may be made at such address, but it does not seem to be decided that it *must* be made there. See next note.

To whom presentment must be made. Art. 167. When a place of payment is designated by a bill, presentment for payment at that place is a sufficient presentment to the drawee or acceptor without any further demand.⁵

Explanation 1.—It is the duty of the payor to see that the money is ready at the place where the bill is payable, and that there is some person there with authority to hand over the money in exchange for the bill.⁶

ILLUSTRATIONS.

1. B. makes a note payable at his house in Maidstone and at the "X. Bank," London. Presentment at either place is sufficient.⁷

¹ *Gibb v. Mather* (1832), 2 Cr. & J. 254, Ex. Ch.

² *Saul v. Jones* (1858), 28 L. J. Q. B. 37.

³ *Reynolds v. Chettle* (1811), 2 Camp. 595; *Harris v. Parker* (1833), 3 Tyr. 370.

⁴ *Hine v. Allely* (1833), 1 N. & M. 433; *Buxton v. Jones* (1840), 1 M. & G. 83.

⁵ *De Bergareche v. Pullin* (1826), 3 Bing. 476; *Wilmut v. Williams* (1844), 7 M. & Gr. 1017; Cf. *Butterworth v. Le Despencer* (1814), 3 M. & S. 149.

⁶ *Brown v. McDermott* (1805), 5 Esp. 265; *Buxton v. Jones* (1840), 1 M. & Gr. at 86.

⁷ *Beeching v. Gower* (1816), Holt. N. P. C. 313; Cf. *Pollard v. Herries* (1803), 3 B. & P. 335.

2. B. accepts a bill "payable at No. 1, X. Street, London." To whom B. dies. Presentment at 1, X. Street, is sufficient, without making search for B.'s executor.¹ To whom presentment must be made.

3. Bill addressed to "Mr. B., No. 1, X. Street, London." B. accepts it generally. It is presented at No. 1, X. Street, and the house is found shut up. This is sufficient.²

4. Bill addressed to "Mr. B., No. 1, X. Street, London." B. accepts it generally. The holder takes the bill to No. 1, X. Street, and inquires for B. A woman living in the house informs him that B. has left. This is sufficient.³

5. B. accepts a bill payable at the "X. Bank." At maturity the "X. Bank" hold the bill, but B. has no assets there. This is sufficient. No presentment to B. personally is necessary.⁴

Explanation 2.—When no place of payment is designated by a bill, presentment for payment should be made to the drawee or acceptor at his place of business or residence.⁵

NOTE.—The law on this point is not yet settled. It is conceived that in the case of a trade bill presentment at the drawee's usual place of business would be sufficient.⁶ When the bill is drawn on a non-trader, and he is not found at his house, perhaps some further search should be made.⁷ In America it is held that a presentment to the drawee or acceptor away from his place of business (*e.g.*, in the street), is not sufficient, unless he waive the irregularity, and refuse payment on some other ground.⁸ German Exchange Law, Art. 91, provides that when a bill is not payable at a particular place it must be presented for payment at the office of the drawee if he have one, or if not at his residence. If his office and residence are unknown, inquiry is to be made of the police, and the fact that search has been made for him is to be recorded in the protest. New York Draft Code, § 1748, provides that a negotiable instrument must be presented to the principal debtor if he can be found at the place where presentment should be made; if not, it must be presented to some other person of discretion, if one can be

¹ *Philpot v. Bryant* (1827), 3 C. & P. 244.

² *Hine v. Alley* (1833), 4 B. & Ad. 624.

³ *Buxton v. Jones* (1840), 1 M. & Gr. 83.

⁴ *Bailey v. Porter* (1845), 14 M. & W. 44.

⁵ *Cf. Mitchell v. Baring* (1829), 10 B. & C. at 9.

⁶ *Brooks' Notary*, 4th ed., p. 119; *Crosse v. Smith* (1813), 1 M. & S. at 554.

⁷ *But cf. Chard v. Fox* (1849), 14 Q. B. 230, where, however, the point was not argued.

⁸ *King v. Holmes* (1849), 11 Pennsylv. R. 456.

To whom presentment must be made. found there; and if not, then it must be presented to a notary public within the state. If the instrument does not specify a place of payment, it must be presented at the place of business or residence of the principal debtor, or wherever he may be found, at the option of the presenter.

Explanation 3.—When a bill is addressed to, or accepted by two or more persons, who are not partners, and no place of payment is designated, presentment for payment must (probably) be made to them all.¹

Explanation 4.—When the drawee or acceptor of a bill is dead, and no place of payment is designated, presentment for payment must be made to his executors or administrators, if they can be found.²

Excuses for non-presentment.

Art. 168. Presentment for payment is dispensed with—

(1.) When the drawee is a fictitious person,³ or (perhaps) a person not having capacity to contract.⁴

(2.) As regards the drawer or an indorser, when such drawer or indorser is, as between the parties to the bill, the principal debtor, and has no reason to expect that the bill would be paid if presented to the drawee or acceptor.⁵ Cf.

Art. 200.

ILLUSTRATIONS.

1. A. draws a bill on B. payable to his own order, and indorses it. B. accepts it to accommodate A. C. also indorses it to accommodate A. A. discounts it with D. A. does not provide B. with any funds to pay it. Presentment is not necessary to charge A.,⁶ but is necessary to charge C.⁷

¹ *Union Bank v. Willis* (1844), 49 *Massachusetts R.* 504; Cf. *Gates v. Beecher* (1875), 60 *New York R.* 518, as to ex-partners.

² *Byles*, p. 205; *Williams on Executors*, 7th ed., p. 2003; Cf. *Caunt v. Thompson* (1849), 7 *C. B.* 400; *French Code*, Art. 168.

³ *Smith v. Bellamy* (1817), 2 *Stark.* 223; Cf. Art. 2.

⁴ *Byles*, p. 187; *Chitty*, p. 202, *sed qu.*?

⁵ Cf. *Turner v. Samson* (1876), 2 *L. R. Q. B. D.* 23, *C.A.*; *Pothier*, No. 157.

⁶ *Terry v. Parker* (1837), 6 *A. & E.* 502.

⁷ *Saul v. Jones* (1858), 28 *L. J. Q. B.* 37.

2. A. draws a cheque on the "B. Bank," not having sufficient funds there to meet it, and having no reason to expect that it will be honoured. Presentment is not necessary to charge A.¹

Excuses
for non-
present-
ment.

NOTE.—As regards this excuse, presentment for payment and notice of dishonour are said in *Terry v. Parker* to rest on the same grounds. As to French law, see Art. 160, n.

(3.) When, after the exercise of reasonable diligence, presentment cannot be effected. Cf. Art. 200.

Explanation.—The fact that the holder has reason to believe that the bill will, on presentation, be dishonoured, does not dispense with the necessity for presentment.²

ILLUSTRATIONS.

1. Bill drawn on B. is accepted by an agent. At the time the bill matures B. is abroad. This is no excuse, presentment should be made to the agent.³

2. B. makes a note "payable at Guildford." B. has no residence there. The note is presented at two banks, and then treated as dishonoured. This is sufficient.⁴

3. The drawer of a bill orders the drawee not to pay it. The holder hears of this. Presentment is not dispensed with.⁵

4. The acceptor of a bill informs the holder that he cannot, or will not, pay it when due. Presentment is not dispensed with.⁶

5. The acceptor of a bill becomes bankrupt before it matures. Presentment is not excused.⁷

6. B. makes a note payable at "1, X. Street, London." Before it becomes due he becomes insolvent and absconds. Presentment at 1, X. Street, is not dispensed with.⁸

NOTE.—In some American States there is a tendency to dispense with the attempt to make presentment when such attempt would be

¹ *Wirth v. Austin* (1875), 10 L. R. C. P. 689.

² Cf. *Pothier*, No. 144—147; *Re East of England Co.* (1868), 4 L. R. Ch. at 18.

³ *Phillips v. Astling* (1809), 2 Taunt. 206.

⁴ *Hardy v. Woodroffe* (1818), 2 Stark. 819.

⁵ *Hill v. Heap* (1823), D. & R. N. P. C. 57; Cf. *Nicholson v. Gouthit* (1796), 2 H. Bl. 609.

⁶ *Baker v. Birch* (1811), 3 Camp. 107; *Ex parte Bignold* (1836), 1 Deac. 712.

⁷ *Esdaile v. Soverby* (1809), 11 East. at 117; *Howe v. Bowes* (1813), 5 Taunt. 80, Ex. Ch.; *Pothier*, No. 147.

⁸ *Sands v. Clarke* (1849), 19 L. J. C. P. 84; *Pierce v. Gate* (1853), 66 Massachusetts. R. 190.

Excuses
for non-
present-
ment.

futile.¹ This tendency is of doubtful expediency, and finds no favour in England. Cf. Art. 188, n.

(4.) By waiver, express or implied.²

Explanation.—Waiver of notice of dishonour does not include a waiver of presentment for payment.³

NOTE.—In Louisiana it is held that a waiver of protest does not include a waiver of presentment.⁴ German Exchange Law, Art. 42, provides that when the drawer or indorser inserts the term “protest waived,” presentment for payment is not waived thereby, but it lies on such drawer or indorser to prove that the bill has not been duly presented.

(5.) For the purpose of protesting for non-payment when a bill of exchange, payable elsewhere than at the residence of the drawee, is dishonoured by non-acceptance. Cf. Art. 179.

Excuses for
delay in
present-
ment.

Art. 169. Delay in making presentment for payment is excused when such delay is caused by circumstances beyond the control of the holder, and not imputable to his negligence.⁵ Cf. Art. 201.

ILLUSTRATIONS.

1. The holder of a bill dies suddenly just before it matures. The circumstances may be such as to excuse delay.⁶

2. Bill drawn in England, payable in Leghorn. At the time the bill matures Leghorn is besieged. The holder is not in Leghorn. This excuses delay.⁷

3. Bill presented for payment by post. It is sent off in time to reach the drawee on the day of maturity, but by mistake of the post-office is delayed some days. The delay is (probably) excused.⁸

4. Bill drawn in England, payable in Paris. By a French

¹ See e.g., *Forster v. Julien* (1861), 24 New York R. 28.

² *Hopley v. Dufresne* (1812), 15 East, 275; Cf. *Ex parte Bignold* (1836), 1 Deac. at 787; *Sheldon v. Horton* (1870), 43 New York R. 93; Cf. Art. 121.

³ *Hill v. Heap* (1823), D. & R. N. P. C. 57; Cf. Art. 200.

⁴ *Wilkins v. Davis* (1868), 20 La. An. 538; *contra* in New York *Coddington v. Davis* (1848), 1 New York R. 187.

⁵ *Pothier*, No. 144; *Nouguier*, §§ 1107—1108; *Story*, § 327; Cf. *Rothschild v. Currie* (1841), 1 Q. B. at 47.

⁶ *Id.*

⁷ *Patience v. Townley* (1805), 2 Smith 223.

⁸ *Windham Bank v. Norton* (1852), 22 Connecticut R. 214; Cf. Art. 201.

moratory law, passed in consequence of war, the maturity of bills payable in Paris is postponed three months. The delay in making presentment is excused.¹ Excuses for delay in presentment.

NOTE.—The cases do not clearly distinguish between excuses for non-presentment and excuses for delay in presentment, but surely when the question is one of reasonable diligence the distinction is an important one.²

Art. 170. A bill is said to be dishonoured by non-payment—(a) when it is duly presented for payment, and payment is refused or cannot be obtained;³ Dishonour by non-payment. or (b), when presentment for payment is excused, and the bill is overdue and unpaid.

Art. 171. Subject to Art. 184 the holder of a bill which is dishonoured by non-payment acquires an immediate right of recourse against all antecedent parties, provided he take the necessary proceedings on dishonour.⁴ Consequence of dishonour.

NOTE.—It seems that the holder's right of *action* against a drawer or indorser dates from the time when notice of dishonour is or ought to be received, and not from the time when it is sent.⁵

Presentment for Payment to charge Acceptor.

Art. 172. When a bill of exchange is accepted generally (Art. 38) presentment for payment is not requisite in order to charge the acceptor.⁶ Presentment to charge acceptor.

NOTE.—The reason is that at common law the debtor is bound

¹ *Rouquette v. Overmann* (1875), 10 L. R. Q. B. 525.

² Cf. *Allen v. Edmundson* (1848), 2 Exch. at 724, notice of dishonour.

³ Cf. *Mellish v. Simeon* (1794), 2 H. Bl. 378; *Butterworth v. Despencer* (1814), 3 M. & S. 150.

⁴ *Ex parte Moline* (1812), 1 Rose 303; *Siggers v. Lewis* (1834), 1 C. M. & R. 370.

⁵ *Custrigue v. Bernabo* (1844), 6 Q. B. 498

⁶ *Rowe v. Young* (1820), 2 Bligh. H. L. at 467—468, Bayley, J.; *Fayle v. Bird* (1827), 6 B. & C. 531. See the old form of declaration against an acceptor or maker.

Presentment to charge acceptor. to seek out his creditor to pay him.¹ The practical importance of the rule is that the acceptor cannot avail himself of any informality in the presentment. No one would be likely to bring an action without first applying for payment. Cf. Art. 283.

Explanation 1.—The acceptor may, by the terms of a qualified acceptance (Art. 39), make presentment for payment a condition precedent to his liability.²

ILLUSTRATION.

B. accepts a bill payable at the "X. bank only." The holder must present it for payment at the X. bank before he can sue B.³

Explanation 2.—When by the terms of an acceptance presentment is required, the acceptor, in the absence of express stipulation, is not discharged by the mere omission to present the bill for payment on the day it matures.⁴

NOTE.—When a bill is accepted payable at a particular place and there only, the acceptor's position is analogous to that of the drawer of a cheque.⁵ If, then, he could shew that he was damaged by the holder's negligence in omitting to present, he would probably be discharged. Cf. Art. 258.

Presentment for Payment to charge Stranger to Bill.

Guarantor. Art. 173. Presentment for payment is not a condition precedent to the liability of a person who has given a guarantee for the payment of a bill by the acceptor.⁶

¹ *Cranley v. Hillary* (1812), 2 M. & S. 120; *Walton v. Mascall* (1844), 13 M. & W. at 458, Parke, B.

² *Rowe v. Young* (1820), 2 Bligh. 391, H. L., as modified by 1 & 2 Geo. 4, c. 78.

³ *Halstead v. Skelton* (1843), 5 Q. B. at 93, 94, Ex. Ch.

⁴ *Smith v. Vertue* (1860), 30 L. J. C. P. 56 at 59; see per Keating, J., at 60, as to acceptance to pay at a particular place.

⁵ *Bishop v. Chitty* (1742), 2 Stra. 1195; *Ramchurn v. Radakissen* (1854), 9 Moore P. C. at 70, Parke, B.

⁶ *Walton v. Mascall* (1844), 13 M. & W. 452; *Nouguier*, § 1192; Cf. *Hitchcock v. Humphrey* (1843), 5 M. & Gr. 559.

NOTE.—The reason is that presentment is not necessary to charge Guarantor. the acceptor or maker (Art. 172). If the drawer were the party guaranteed, presentment would be necessary.

Art. 174. A person who is not a party to a bill, but who is liable on the consideration for which it is given, is discharged by the holder's omission to present it for payment.¹ Person liable on consideration.

Explanation.—The same diligence is not requisite in this case as is necessary to charge a party to the instrument. It is sufficient that the holder does what is reasonable to obtain payment.²

Noting and Protest.

Art. 175. "Noting" means a minute made by a notary public on a dishonoured bill at the time of its dishonour. Noting defined.

NOTE.—The "noting" consists of the notary's initials, the date, and the amount of the noting charges, and sometimes a statement of the cause of dishonour—e.g. "no effects," or "no advice," or "no account." The noting is usually made on a ticket attached to the bill.³

Art. 176. "Protest" means a formal notarial certificate attesting the dishonour of a bill. Protest defined.

NOTE.—*Form, &c.*—See the term "notarial act" defined, Art. 45, n. The protest should contain (1) An exact copy of the bill, or the bill itself annexed. (2) A statement of the parties for whom and against whom the bill is protested. (3) The date of protesting and the place where protest is made. (4) A statement that acceptance or payment was demanded by the notary; the terms of the answer, if any; or a statement that no answer was given, or

¹ *Anderton v. Beck* (1812), 16 East. 248; *Hopkins v. Ware* (1869), 4 L. R. Ex. 268; Cf. *Straker v. Graham* (1839), 4 M. & W. 721, presentment for acceptance.

² *Sands v. Clarke* (1849), 8 C. B. at 761, Maule, J.; *Smith v. N. S. Wales Bank* (1872), 8 Moore P. C. N. S. at 461—463, Mellish, L. J. See e.g., *Robson v. Oliver* (1847), 10 Q. B. 704 at 717.

³ See *Brooks' Notary*, 4th ed., p. 80; and forms, p. 213.

Protest defined. that the drawee or acceptor could not be found. (5) A reservation of rights against the parties liable. (6) The subscription and seal of the notary making the protest.¹ The protest must be stamped (Cf. p. 234). A protest may be in duplicate or triplicate.²

By whom protest to be made. Art. 177. The protest must be made by a notary public or other person authorized to act as such.³

NOTE.—When the services of a notary cannot be obtained at the place where a bill is dishonoured, it is said that a protest may be made by any respectable inhabitant in the presence of two witnesses.⁴ In England the preliminary presentment of the bill to the drawee or acceptor is usually made by the notary's clerk.⁵ In America the validity of a protest founded on such a presentment has been doubted: see *Parsons*, p. 641.

Time for protest. Art. 178. A foreign bill of exchange should be noted for protest on the day that it is dishonoured.⁶

Explanation.—When a bill has been duly noted, the formal protest may (for purposes of suit in this country) be extended at any time.⁷

NOTE.—In practice foreign bills are frequently not noted till the day after their dishonour.⁸ And it is conceived that if the bill has been duly presented this is sufficient. Under 9 & 10 Will. 3, c. 17, inland bills (payable after date) are to be protested on the day following their maturity; but this Act has always been regarded as permissive, and inland bills are usually noted on the day that they are dishonoured. By French Code, Art. 162, a bill is to be protested for non-payment on the day after it is due. By German Exchange Law, Art. 41, a dishonoured bill may be protested for non-payment on the day it is due, and it must not be protested later than the second day after. See the laws of different nations on the point collected: *Nouguier*, § 1270.

¹ See *Brooks' Notary*, 4th ed., p. 82; and for forms, see pp. 214—219; Cf. French Code, Art. 173; German Exchange Law, Art. 88.

² *Brooks' Notary*, 4th ed., p. 82; Cf. *Geralopulo v. Wieler* (1851), 20 L. J. C. P. 105.

³ *Byles*, p. 260; Cf. German Exchange Law, Art. 87; French Code, Art. 173.

⁴ *Byles*, p. 260; and Cf. 9 & 10 Will. 3, c. 17, § 1.

⁵ *Brooks' Notary*, 4th ed., pp. 78 and 138; and *Thomson*, p. 810, as to Scotland.

⁶ *Tassel v. Lewis* (1699), *Ld. Raym.*, 743; Cf. *Lefley v. Mills* (1791), 4 T. R. at 174.

⁷ *Geralopulo v. Wieler* (1851), 20 L. J. C. P. 105; Cf. *Lefley v. Mills* (1791), 4 T. R. at 175.

⁸ *Brooks' Notary*, 4th ed., p. 80.

Art. 179. A bill must be protested at the place where it is dishonoured.¹ Where protest to be made.

Exception.—When a bill of exchange, drawn payable at a place other than the residence of the drawee, is dishonoured by non-acceptance “such bill *shall or may* be protested for non-payment” in the place where it is expressed to be payable without any further presentment to the drawee.²

ILLUSTRATION.

A bill drawn on B. in Liverpool, “payable in London,” but not saying where. It is presented for acceptance to B. in Liverpool, and dishonoured. The bill may be protested for non-payment in London without any further demand on B.

NOTE.—Previous to 2 & 3 Will. 4, c. 98, it seems that the bill must have been presented for payment to B. in Liverpool and protested for non-payment there.³ The effect of the Act perhaps is to give the holder an option.

Art. 180. When laws conflict, the validity of a protest is determined by the law of the place where it is made.⁴ Conflict of laws.

Protest to charge Drawer and Indorsers.

Art. 181. When a foreign bill of exchange⁵ is dishonoured it must be duly protested for non-acceptance or non-payment, as the case may be, in order that the holder may preserve his right of recourse against the drawer and indorsers.⁶ Protest—when necessary.

Explanation 1.—When a bill of exchange is dis-

¹ Cf. *Mitchell v. Baring* (1829), 10 B. & C. 4; French Code, Art. 173.

² 2 & 3 Will. 4, c. 98 (1832).

³ *Mitchell v. Baring*, *supra*.

⁴ *Rothschild v. Currie* (1841), 1 Q. B. 43; *Rouquette v. Overman* (1875), 10 L. R. Q. B. 525; *Thomson*, p. 308; *Pothier*, No. 155; *Nouguier*, § 1270; Cf. Art. 202.

⁵ Art. 24, foreign bill defined.

⁶ *Gale v. Walsh* (1793), 5 T. R. 239; Cf. *Whitehead v. Walker* (1842), 9 M. & W. 506; *Ex parte Lowenthal* (1874), 9 L. R. Ch. at 593.

Protest -- when necessary. honoured by non-acceptance and the holder, without lawful excuse, omits to protest it, the drawer and indorsers are discharged as regards such holder, and all subsequent holders, with notice that the bill has been so dishonoured; but the drawer and indorsers are not discharged as regards a subsequent holder for value who takes the bill before it is overdue, and without notice that it has been dishonoured.¹

Explanation 2.—When a bill of exchange has been dishonoured by non-acceptance, and duly protested, there may be a subsequent protest for non-payment at maturity.²

NOTE.—*Qu.* if such subsequent protest is not necessary in some cases, at any rate for the purpose of recourse abroad? See too Art. 185. As before pointed out (Art. 157, n.) under the Continental Codes, no right of action arises on non-acceptance; the holder can demand security from the antecedent parties, but he is bound to re-present the bill at maturity. A foreign note, it seems, need not be protested for purposes of suit in England,³ nor need an inland bill or note.⁴

Excuses for non-protest and delay.

Art. 182. Protest is dispensed with (for purposes of suit in England) by circumstances which would dispense with notice of dishonour in the case of an inland bill; and delay in protesting is excused by circumstances which would excuse delay in giving notice of dishonour.⁵

NOTE.—As to notice of dishonour see Arts. 200, 201; and Cf. Arts. 168, 169 as to excuses for non-presentment for payment, or delay in presentment; see Art. 121 as to indorsements waiving protest, and Art. 165, n., as to protest of lost bill.

¹ Cf. *Dunn v. O'Keefe* (1816), 5 M. & S. 282, Ex. Ch.; and Art. 191.

² *Campbell v. French* (1795), 6 T. R. at 211—212, Ex. Ch.; Cf. *Whitehead v. Walker* (1842), 9 M. & W. at 516.

³ *Bonar v. Mitchell* (1850), 5 Exch. 415 at 417; Cf. *Burke v. McKay* (1844), 2 How. 66, Sup. Ct., U. S., Story, J.

⁴ *Windle v. Andrews* (1819), 2 B. & Ald. 696.

⁵ *Leyge v. Thorpe* (1810), 12 East, 171; see e.g. *Campbell v. Webster* (1845), 15 L. J. C. P. 4, waiver; *Rothschild v. Currie* (1841), 1 Q. B. at 47, delay.

Protest for Better Security.

Art. 183. When the acceptor of a bill of exchange becomes bankrupt before its maturity, it may be protested for better security.¹

NOTE.—Under some of the foreign codes, when the acceptor fails, security can be demanded from the drawer and indorsers. See *e.g.* German Exchange Law, Art. 29. In England this cannot be done, and the only effect here of such a protest is that there may be an acceptance *suprà protest* (Art. 41). In France if the acceptor fails the bill may be at once treated as dishonoured and protested for non-payment: French Code, Art. 163, and *Nouguier*, § 1277.

Presentment when there is a Reference in Need.

Art. 184. When a bill of exchange is dishonoured by non-acceptance or by non-payment, and the drawer of such bill has given a reference in case of need (Art. 7), the holder must (perhaps) present the bill for acceptance or payment *suprà protest* in order to preserve his right of recourse against the drawer and indorsers.²

When the reference in case of need is given by an indorser, presentment for acceptance or payment *suprà protest* is (probably) optional.³

NOTE.—When a reference in need is given by the drawer, presentment in accordance therewith seems to be part of the original contract. It is like the case of a bill drawn payable at the house of some person other than the drawee. Again, in the case of a foreign bill, how is the question affected by the fact that presentment is obligatory according to the law of the place where the bill is drawn? By French law, when a reference in need is given by the drawer, the holder is bound to present, but when the reference is given by an indorser it seems he has an option: *Nouguier*, § 249—250. By German Exchange Law, Art. 62, presentment is in both cases obligatory.

¹ *Ex parte Wackerbath* (1800), 5 Ves. Jr. 574; *Chitty*, p. 237; *Brooks' Notary*, 4th ed., p. 88; for a form, see p. 219.

² *Pothier*, No. 137, and the language of 6 & 7 Will. 4, c. 58; Cf. Arts. 43 and 243.

³ Cf. *Leonard v. Wilson* (1884), 2 Cr. & M. 589 at 595, and *passim Ex parte Prange* (1865), 1 L. R. Eq. at 5.

Duty to
protest for
non-pay-
ment.

Art. 185. A bill of exchange must be duly presented for payment to the drawee or acceptor and noted or protested for non-payment before it is presented for payment to the acceptor *suprà protest*¹ or referee in case of need.²

NOTE.—As to protest see Arts. 175 to 180. If the holder omit to protest he cannot sue the acceptor *suprà protest*; on the other hand if the case of need pays without a protest, he pays at his own risk.³ As to acceptance *suprà protest*, see Arts. 41—48.

Time for
presenting
to acceptor
*suprà
protest*

Art. 186. When the address of the acceptor *suprà protest* or referee in case of need is in the town or place where the bill is payable, the bill must be presented to him not later than the day following its maturity; and when the address of such acceptor *suprà protest* or referee in case of need is in a town or place other than the town or place where the bill is payable, the bill must be forwarded for presentation to him not later than the day following its maturity.⁴

In computing time non-business days are to be excluded.⁵

Dishonour
by accep-
tor *suprà
protest*.

Art. 187. When a bill of exchange is dishonoured by the acceptor *suprà protest* it must (probably) be again protested in order to charge the other parties liable thereon.⁶

¹ *Hoare v. Casenove* (1812), 16 East. 391; Cf. *Williams v. Germaine* (1827), 7 B. & C. at 475—477; German Exchange Law, Arts. 62 and 88.

² *Geralopulo v. Wiedler* (1851), 20 L. J. C. P. 510; Cf. German Exchange Law, Arts. 62 and 88.

³ Art. 241.

⁴ 6 & 7 Will. 4, c. 58, § 1; German Exchange Law, Art. 60.

⁵ 6 & 7 Will. 4, c. 58, § 2.

⁶ *Chitty*, p. 242; *Nouguier*, §§ 1320—1321. No English decision; Cf. *Williams v. Germaine, jr.* (1827), 1 M. & Ry. 403; German Exchange Law, Arts. 62 and 89. *Brooks' Notary*, 4th ed. 108.

Notice of Dishonour to Charge Drawer and Indorsers.

Art. 188. "Notice of dishonour" means notification of dishonour, i.e. formal notice.¹

Notice of dishonour means notification.

Explanation.—The fact that the drawer or indorser of a bill knows that it has been dishonoured does not dispense with the necessity for giving him notice of dishonour.²

NOTE.—*Pothier* (No. 147), speaking of protests, lays down a similar rule: "la raison est que les formalités établies par les lois pour donner à quelqu'un la connaissance de quelque fait, ne se suppléent point, et ne s'accomplissent pas par équipollence." As regards notes and inland bills, notice of dishonour is the English substitute for protest.³ As regards foreign bills notice of dishonour is supplementary to protest. Under French Code, Arts. 165—166 (modified by law of May 3, 1862, cf. *Nouguier*, §§ 1086—1099), and German Exchange Law, Arts. 45—47, notice of protest must be given within certain definite limits of time. See *post*, Art. 195.

Art. 189. When a bill is dishonoured,⁴ due notice of dishonour, unless excused, is a condition precedent to the liability of the drawer or any indorser thereof.⁵

When necessary.

Explanation.—Due notice of dishonour means notice given in accordance with Arts. 192 to 199.

ILLUSTRATION.

Bill drawn by A. and indorsed by C. is dishonoured. Due notice is given to C., but none is given to A. The holder can sue C., but he cannot sue A.;⁶ nor has C. any remedy over against A.⁷

NOTE.—The holder's duty is fulfilled by giving notice to the parties he intends to look to. If they in turn give notice to other parties, he may take advantage of it; but their omission to do so cannot prejudice him.

¹ *Burgh v. Legge* (1839), 5 M. & W. at 422, Alderson, B.; *Carter v. Flower* (1847), 16 M. & W. at 749, Parke, B.

² *Miers v. Brown* (1843), 11 M. & W. 372; *East v. Smith* (1847), 16 L. J. Q. B. 292; Cf. *Caunt v. Thompson* (1849), 18 L. J. C. P. 125.

³ *Solarte v. Palmer* (1883), 7 Bing. at 533.

⁴ Art. 156 and 170.

⁵ *Berridge v. Fitzgerald* (1869), 4 L. R. Q. B. at 642; *Rowe v. Tipper* (1853), 22 L. J. C. P. at 137, Maule, J.

⁶ Cf. *Rickford v. Ridge* (1810), 2 Camp. at 538.

⁷ *Miers v. Brown* (1843), 11 M. & W. 372.

Consequence of omission to give notice of dishonour.

Art. 190. Subject to Art. 191, the omission, without lawful excuse, to give due notice of dishonour to the drawer or any indorser of a bill discharges such drawer or indorser from his liability on the instrument, and also from any liability on the consideration for which it was given.¹

NOTE.—Under French Code, Arts. 168—170, the omission to give due notice of protest discharges the indorsers, but the drawer is not discharged unless he can shew that the drawee had sufficient effects in his hands when he dishonoured the bill. Under German Exchange Law, Art. 45, the omission to give due notice of protest deprives the holder of his right to interest and damages, but he can still recover the amount of the bill, unless his omission has caused actual damage.

Bill dishonoured by non-acceptance and subsequently negotiated.

Art. 191. When a bill of exchange is dishonoured by non-acceptance, and due notice of dishonour is not given to the drawer or an indorser thereof, such drawer or indorser is discharged as regards the holder at the time of dishonour, and all subsequent holders with notice thereof;² but such drawer or indorser is not discharged as regards a subsequent holder for value who takes the bill before it is overdue and without notice that it has been so dishonoured.³

Notice of dishonour, by whom to be given.

Art. 192. Notice of dishonour must be given (a) by or on behalf of the holder,⁴ or (b) by or on behalf of an indorser who, at the time of giving it, is liable on the bill, and who has a right of recourse against the party to whom notice is given.⁵

¹ *Bridges v. Berry* (1810), 3 Taunt. 130; *Peacock v. Purcell* (1863), 14 C. B. N. S. 748.

² *Roscoe v. Hardy* (1810), 12 East 434; *Bartlett v. Benson* (1845), 14 M. & W. 733.

³ *Dunn v. O'Keefe* (1816), 5 M. & S. 282, Ex. Ch.; Cf. *Whitehead v. Walker* (1842), 9 M. & W. 506; see too Art. 133, n.

⁴ See e.g. *Firth v. Thrush* (1828), 8 B. & C. 387, notice given by holder's attorney; *Viale v. Michael* (1874), 30 L. T. N. S. 463, by notary's clerk.

⁵ *Chapman v. Keane* (1835), 3 A. & E. 193; *Story*, § 304; Cf. *Burgh v. Legge* (1839), 5 M. & W. at 420, and *Harrison v. Rucoe* (1846), 15 M. & W. at 234 and 236, Parke, B.

ILLUSTRATIONS.

1. A bill indorsed by C. and held by D. is dishonoured. X., Notice of dishonour, who was at one time employed by the drawer to get the bill dis- by whom counted, but is not in any way acting on D.'s behalf, informs C. to be that the bill has been dishonoured. This is not sufficient; C. is given discharged.¹

2. C. is the first indorser of a dishonoured bill held by D. D. gives notice to C. one day late. C., on the same day, gives notice to the drawer; thus, as it were, making up for the lost day. This notice is ineffectual; for C., having been discharged by the holder's delay, is a mere stranger.²

3. A bill indorsed by C. is held by D. D.'s attorney gives notice of dishonour to the drawer, but by mistake gives it in C.'s name instead of D.'s. The notice is sufficient, provided C. is liable to D., and has a right of recourse against the drawer.³

4. C., the indorser of a bill, holds it as agent for the indorsee. C. presents it for payment, and it is dishonoured. Notice of dishonour given by C. in his own name is sufficient.⁴

Explanation 1.—A party entitled to give notice may constitute the drawee or acceptor his agent for the purpose of giving notice of dishonour.⁵

Explanation 2.—Notice of dishonour may be given by an agent in his own name or in the name of any party entitled to give notice.⁶

Art. 193. Notice of dishonour may be given by the party entitled to give it either personally, or by messenger or other agent,⁷ or through the post-office.⁸ In what manner.

¹ *Stewart v. Kennett* (1809), 2 Camp. 177; Cf. *East v. Smith* (1847), 16 L. J. Q. B. 292.

² *Turner v. Leach* (1821), 4 B. & Ald. 451.

³ *Harrison v. Ruscoe* (1846), 15 M. & W. 231.

⁴ *Lysaght v. Bryant* (1850), 19 L. J. C. P. 160.

⁵ *Rosher v. Kieran* (1814), 4 Camp. 86, as explained by *Harrison v. Ruscoe* (1846), 15 M. & W. at 235; Cf. *Bailey v. Bodenham* (1864), 33 L. J. C. P. at 255, Erle, J.; see *Stanton v. Blossom* (1817), 14 Massachusetts R. 116, where drawee had no authority, and notice was held bad. Cf. Art. 196.

⁶ *Harrison v. Ruscoe* (1846), 15 M. & W. at 235.

⁷ Cf. *Pearson v. Crallan* (1805), 2 Smith. 404, as to messenger's expenses.

⁸ *Stocking v. Collin* (1841), 7 M. & W. 516. Cf. Art. 201.

In what
manner.

Explanation 1.—When notice of dishonour is sent by post the sender is not prejudiced by the delay or default of the post-office, but is deemed to have given due notice of dishonour.¹

Explanation 2.—When notice of dishonour is sent by post it lies on the sender to prove that the letter containing the notice was duly addressed and posted.²

NOTE.—The sufficiency of the direction on the letter is a question of reasonable diligence. If the drawer or indorser has a place of business the notice should be addressed to him there, if he has not then it should be addressed to him at his residence, and the party giving notice is bound to use reasonable diligence to discover such place of business or residence.³ When, however, the bill contains an address it seems that such address is in any case sufficient to charge the party giving that address.⁴ German Exchange Law, Art. 47, provides that when an indorser does not state his address notice may be sent to the indorser who precedes him.

For whose
benefit
notice
enures.

Art. 194. Notice of dishonour given by or on behalf of the holder enures for the benefit of (a) all subsequent holders, and (b) all prior indorsers liable on the bill who have a right of recourse against the party to whom notice is given.⁵

Notice of dishonour given by or on behalf of an indorser entitled to give notice,⁶ enures for the benefit of the holder and all indorsers liable on the bill who have a right of recourse against the party to whom notice is given.⁷

¹ *Woodcock v. Houldsworth* (1846), 16 M. & W. 124, delay; *Mackay v. Judkins* (1858), 1 F. & F. 208, loss, Byles, J.; *Renwick v. Tighe* (1860), 8 W. R. 391.

² *Hawkes v. Salter* (1828), 4 Bing. 715; Cf. *Skilbeck v. Garbett* (1845), 7 Q. B. 846.

³ *Berridge v. Fitzgerald* (1869), 4 L. R. Q. B. 639.

⁴ *Burmester v. Barron* (1852), 17 Q. B. 828; Cf. *Ex parte Baker* (1877), 4 L. R. Ch. D. at 799, C. A.

⁵ Byles, p. 285; *Stafford v. Gates* (1820), 18 Johns. 327, New York.

⁶ Cf. Art. 192.

⁷ *Chapman v. Keane* (1835), 3 A. & E. 193; *Lysaght v. Bryant* (1850), 19 L. J. C. P. 160; *Streeter v. Fort Bank* (1866), 34 New York R. 413.

NOTE.—In New York it has been held that notice duly sent by the holder does not enure for the benefit of a prior indorser, unless it reaches the party to whom it is sent, but the circumstances of the case were somewhat special.¹ See Art. 191 for a case where an indorser might be liable on the bill, and yet not able to avail himself of a notice of dishonour given by another, or to give one himself.

Art. 195. Notice of dishonour may be given by or on behalf of the holder as soon as the bill has been dishonoured,² and it must be given within a reasonable time after dishonour.³

Explanation 1.—Reasonable time is a mixed question of law and fact.⁴

Explanation 2.—In determining what is a reasonable time, non-business days must be excluded.⁵

Explanation 3.—When the person giving notice and the party to whom notice is to be given live in the same place, the notice must, in the absence of special circumstances, be sent off in time to reach such party on the day after the dishonour of the bill.⁶

Explanation 4.—When the person giving notice and the party to whom notice is to be given live in different places, the notice must, in the absence of special circumstances, be sent off on the day after the dishonour of the bill, if there be a post at a reasonable hour on that day;⁷ and if there be no

¹ *Beale v. Parish* (1859), 20 New York R. 407.

² *Burbridge v. Manners* (1812), 3 Camp. 193; *Ex parte Molines* (1812), 1 Rose 308. Cf. Art. 171.

³ *Hirschfeld v. Smith* (1866), 1 L. R. C. P. at 351; *Gladwell v. Turner* (1870), 5 L. R. Ex. at 61.

⁴ *Id.*; Cf. Arts. 150, 162.

⁵ 39 & 40 Geo. 3, c. 42; 7 & 8 Geo. 4, c. 15; Bank Holidays Act, 1871; 34 & 35 Vict. c. 17, § 2; Cf. *Lindo v. Unsworth* (1811), 2 Camp. 601, as to a Jewish sacred festival; *Wright v. Shawcross* (1819), cited 2 B. & Ald. at 501, notice received on Sunday.

⁶ *Smith v. Mullet* (1809), 2 Camp. 208; *Hilton v. Fairclough* (1811), 2 Camp. 632; Cf. *Gladwell v. Turner* (1870), 5 L. R. Ex. at 61.

⁷ *Williams v. Smith* (1819), 2 B. & Ald. at 500; and *Wright v. Shawcross*, cited at 501, n.

Notice of dishonour, when to be given. such post on that day, then by the next post there after.¹

NOTE.—Under French Code, Art. 165, the holder of a dishonoured bill must give notice of protest and commence proceedings within fifteen days of the date of protest, if the drawer or indorser sought to be charged live within five myriamètres. Extra time is given for extra distance. Thus, under Art. 166, as modified by the law of May 3, 1862, when a bill is payable in England the holder has one month for giving notice of protest and commencing proceedings against a French drawer or indorser. The notice of protest and the summons (*assignation en justice*) are usually comprised in one document, *Nouguier*, §§ 1088—1089. Under German Exchange Law, Art. 45, the holder must send off written notice of protest within two days after protest.

Right of party receiving notice to transfer it within reasonable time.

Art. 196. A party who receives due notice of the dishonour of a bill has, after the receipt of such notice, the same time for giving notice to antecedent parties that the original holder has after the dishonour of the bill.² Cf. Art. 195.

ILLUSTRATION.

C., the indorser of a bill held by D., receives notice of dishonour on Sunday morning. Sunday being a *dies non*, it is sufficient if C. send off notice to the drawer on Tuesday.³

Explanation 1.—When a bill is in the hands of an agent, the agent has the same time for giving notice to his principal that he would have if he were an independent holder and his principal an indorser liable to him.

ILLUSTRATIONS.

1. A bill payable in London is indorsed in blank by the holder, and deposited with a country banker for collection. The country banker's London agent presents it for payment and gives him due notice of its dishonour. The country banker on the day after the

¹ *Ilackes v. Salter* (1828), 4 Bing. 715; *Carter v. Burley* (1838), 9 New Hamp. R. 558 at 570; Cf. *Geill v. Jeremy* (1827), M. & M. 61.

² *Bray v. Hadwen* (1816), 5 M. & S. 68; Cf. *Rowe v. Tipper* (1853), 22 L. J. C. P. at 137; German Exchange Law, Art. 45; French Code, Art. 167 and 169.

³ *Wright v. Shawcross* (1819), cited 2 B. & Ald. at 501.

receipt of such notice gives notice to his customer, who in turn gives similar notice to his indorser. This indorser has received due notice.¹

Right of party receiving notice to transfer it within reasonable time.

2. C. indorses a bill to the Liverpool branch of the D. Bank. The Liverpool branch sends it to the Manchester branch, and the Manchester branch indorses it to the head office in London, who present it for payment. The head office sends notice of dishonour to the Manchester branch, the Manchester branch sends notice to the Liverpool branch, who give notice to C. Each branch as regards time is to be considered a distinct party.²

3. X. pays a bill *suprà protest* for the honour of C., an indorser, who resides at Bruges, and the same day posts the bill to C. C. by return of post sends the bill back to X., who at once gives notice of dishonour to the drawer. Although six days have elapsed since the dishonour, the notice is in time, and X. can sue the drawer.³

NOTE.—See *contra*, *Ex parte Prange* (1865),⁴ where the authorities were not cited.

Explanation 2.—When a bill is presented for payment through the post-office, the drawee or acceptor is deemed to be the agent of the holder for the purpose of giving notice of dishonour,⁵ and has the same time for giving notice that the holder would have if he himself presented it.⁶

Art. 197. The holder or other person entitled to give notice of dishonour must give notice to a remote party within the same limits of time that would suffice in the case of an immediate party.⁷

Notice of dishonour to remote parties.

ILLUSTRATION.

A dishonoured bill drawn by A. is held by H., the tenth indor-

¹ *Bray v. Hadwen* (1816), 5 M. & S. 68; Cf. *Firth v. Thrush* (1828), 8 B. & C. 387.

² *Clode v. Bayley* (1843), 12 M. & W. 51, approved *Prince v. Oriental Bank* (1878), 3 L. R. Ap. Ca. at 332, P. C.

³ *Goodall v. Polhill* (1845), 14 L. J. C. P. 146.

⁴ 1 L. R. Eq. 1.

⁵ Cf. *Bailey v. Bodenham* (1864), 33 L. J. C. P. at 255, Erle, J.

⁶ *Prideaux v. Criddle* (1869), 4 L. R. Q. B. at 461; Cf. *Heywood v. Pickering*, (1874), 9 L. R. Q. B. 428. Cf. Art. 192, Expl. 1.

⁷ *Rouze v. Tipper* (1853), 22 L. J. C. P. 135; Cf. *Nouguier*, § 1096.

Notice of dishonour to remote parties.

see. H. has no longer time to give notice to A. than he has to give notice to his immediate indorser—*e.g.*, if A., the drawer, and H. live in the same town, H. must give notice to A. on the day following the dishonour of the bill.

NOTE.—If the holder does not give notice to a remote party in due time, he cannot rely on his own notice; but if he has given due notice to his immediate indorser, his rights may yet be saved by a notice given by such indorser; Cf Art. 194.

Notice of dishonour, to whom to be given.

Art. 198. Notice of dishonour must be given to the drawer or indorser intended to be charged, or to some person authorized to receive notice on his behalf.

Explanation 1.—It is the duty of a drawer or indorser, if he be absent from his place of business or residence, to see that there is some person there to receive notice on his behalf.¹

ILLUSTRATIONS.

1. C. is the indorser of a bill which is dishonoured. Verbal notice given to his solicitor is not sufficient.²

2. X., who has authority to indorse for C., indorses a bill in C.'s name. Notice of dishonour given to X. is (perhaps) sufficient.³

3. The drawer of a bill is a non-trader. Verbal notice of dishonour given to his wife at his house, in his absence, is sufficient.⁴

4. The indorser of a bill is a merchant. Notice of dishonour, verbal or written, given to or left with a clerk at his counting-house is sufficient.⁵

5. C. indorses a bill "in need at Messrs. X. & Co." Notice of dishonour given to X. & Co. is not sufficient to charge C.⁶

Explanation 2.—When the drawer or indorser of a bill becomes bankrupt, notice of dishonour may (probably) be given either to the bankrupt or to his trustee.⁷

¹ Cf. *Allen v. Edmundson* (1848), 2 Exch. at 723; *Turner v. Leach* (1818), cited Chitty, 10 ed., p. 333. Art. 200, Cl. (c).

² *Crosse v. Smith* (1813), 2 M. & S. at 553.

³ Cf. *Firth v. Thrush* (1828), 8 B. & C. at 391.

⁴ *Housgo v. Cowne* (1837), 2 M. & W. 348; Cf. *Wharton v. Wright* (1844), 1 C. & K. 585.

⁵ *Allen v. Edmundson* (1848), 2 Exch. at 724; *Viale v. Michael* (1874), 30 L. T. N. S. 463.

⁶ *Ex parte Prange* (1865), 1 L. R. Eq. at 5.

⁷ *Ex parte Baker* (1877), 4 L. R. Ch. D. 795; Cf. *Rhode v. Proctor* (1825), 4 B. & C. 517.

NOTE.—All that has been actually decided is that notice given to the bankrupt in ignorance that the trustee had been appointed is sufficient. It is a question of reasonable diligence.¹

Notice of dishonour, to whom to be given.

Explanation 3.—If the drawer or indorser of a bill be dead, notice of dishonour must be given to his personal representatives, when, with the exercise of reasonable diligence, they can be discovered.²

NOTE.—In New York it is held that notice addressed and sent to an indorser, in ignorance of his death, is sufficient.³

Explanation 4.—When there are two or more joint drawers or indorsers who are not partners, notice of dishonour must (probably) be given to them all.⁴

Art. 199. Notice of dishonour may be given (a) in writing, or (b) by personal communication. The notice may be given in any terms⁵ which—

Notice of dishonour, requisites in form.

- (1.) Sufficiently identify the bill.⁶
- (2.) Intimate that the bill has been dishonoured⁷ by non-acceptance or non-payment, and that the party to whom notice is given is held liable.⁸

Explanation 1.—A misdescription of the bill does not vitiate a notice unless the party to whom notice is given is in fact misled thereby.

ILLUSTRATION.

A notice to the drawer which describes the bill as payable at the

¹ *Ex parte Johnston* (1834), 1 Mon. & Ayr. at 628.

² *Byles*, p. 289; *Massachusetts Bank v. Oliver* (1852), 64 Mass. R. 557.

³ *Merchants Bank v. Birch* (1819), 17 Johns. R. 24.

⁴ *Willis v. Green*, (1843), 5 Hill 232. New York; Cf. *Hubbard v. Matthews* (1873), 54 New York R. 43.

⁵ *Caunt v. Thompson* (1849), 18 L. J. C. P. at 127.

⁶ *Shelton v. Braithwaite* (1841), 7 M. & W. 436; *Gates v. Beecher* (1875), 60 New York R. at 527.

⁷ See Arts. 159 and 170, defining "dishonour."

⁸ *Allen v. Edmundson* (1848), 2 Exch. at 723, Parke, B.; *Metcalfe v. Richardson* (1852), 11 C. B. at 1014, Williams, J.; *Everard v. Watson* (1858), 1 E. & B. at 804, Lord Campbell.

Notice of dishonour, requisites in form. "S. Bank," when in fact it was payable at the "T. Bank,"¹ or which describes a bill of exchange as a note,² or which transposes the names of drawer and acceptor,³ or which describes the acceptor by a wrong name,⁴ may be sufficient.

Explanation 2.—The notice need not expressly state that the bill has been presented and dishonoured,⁵ or protested, if protest be necessary,⁶ or that the party to whom notice is sent is called on to pay the bill.⁷ It is sufficient that these facts can be reasonably inferred from the terms of the notice.

ILLUSTRATIONS.

1. "B.'s acceptance for 50*l.* due on Saturday is unpaid. He has promised to pay it in a week. I shall be glad to see you upon it." (Perhaps) insufficient.⁸

2. "I give notice that a bill, &c. (description), indorsed by you lies at 1, X. Street, dishonoured." Sufficient.⁹

3. The holder's clerk wrote to an indorser that "B.'s acceptance due that day was unpaid, and requested his immediate attention to it." Sufficient.¹⁰

4. "Your draft which became due yesterday is unpaid. Unless the same is paid immediately I shall take proceedings. Noting 5*s.*" Sufficient.¹¹

5. The following notice left at the drawer's counting-house by the holder's clerk: "B.'s acceptance to A., 50*l.*, due January 1, is unpaid. Payment to D. is requested before 4 p.m." Sufficient.¹²

6. "D. Bank. I beg to intimate that B.'s acceptance to you

¹ *Bromage v. Vaughan* (1846), 16 L. J. Q. B. 10.

² *Stockman v. Parr* (1843), 11 M. & W. 809; *Bain v. Gregory* (1866), 14 L. T. N. S. 601.

³ *Mellersh v. Rippen* (1852), 7 Exch. 578.

⁴ *Harpham v. Child* (1859), 1 F. & F. 652.

⁵ *Paul v. Joel* (1859), 28 L. J. Ex. 143, Ex. Ch.

⁶ *Ex parte Lowenthal* (1874), 9 L. R. Ch. 591.

⁷ *King v. Bickley* (1842), 2 Q. B. 419; *Miers v. Brown* (1843), 11 M. & W. 372; *Chard v. Fox* (1849), 14 Q. B. 200.

⁸ *Furze v. Sharwood* (1841), 2 Q. B. 388.

⁹ *King v. Bickley* (1842), 2 Q. B. 419.

¹⁰ *Bailey v. Porter* (1845), 14 M. & W. 44, notice lost, and secondary evidence given of contents.

¹¹ *Armstrong v. Christiani* (1848), 5 C. B. 687; *Everard v. Watson* (1853), 1 E. & B. 801.

¹² *Paul v. Joel* (1858), 27 L. J. Ex. 380, affirmed 28 L. J. Ex. 143.

due 1st January is still unpaid, and I have to request your immediate attention to the same." No signature. Sufficient.¹ Notice of dishonour, requisites

7. Notice to drawer of bill accepted by B. "Yours and B.'s note of hand is now due, and your attention to the same will oblige." Sufficient.² in form.

NOTE.—Notices of dishonour are now construed very liberally. The House of Lords in *Solarte v. Palmer* (1834),³ decided that the notice must inform the holder, either in terms or by necessary implication, that the bill had been presented and dishonoured. This inconvenient decision has frequently been regretted,⁴ and is now, it seems, practically got rid of by considering it merely as an erroneous finding on a question of fact.⁵ Since 1841 (see illustration 1, *supra*) it does not appear that any notice of dishonour has been held bad on the ground of insufficiency in form. In one case, Coleridge, J., suggested that a notice given by an indorser would be more strictly construed than a notice given by the holder.⁶

Explanation 3.—A written notice of dishonour need not be signed.⁷

Explanation 4.—An insufficient written notice may be supplemented and made valid by a personal communication.⁸

Explanation 5.—When notice is given by personal communication,⁹ or when a written notice is supplemented by a personal communication,¹⁰ the sufficiency of such notice is a question of fact.

ILLUSTRATIONS.

1. A person sent by the holder goes to the house of the drawer, who is not a trader, and not finding the drawer informs his

¹ *Maxwell v. Brain* (1864), 10 L. T. N. S. 301.

² *Bain v. Gregory* (1866), 14 L. T. N. S. 601.

³ 1 Bing. N. C. 194.

⁴ Cf. *Everard v. Watson* (1853), 1 E. & B. at 804, Lord Campbell.

⁵ Per Bramwell, B., *Paul v. Joel* (1858), 27 L. J. Ex. at 384; see, too, *Maxwell v. Brain* (1864), 10 L. T. N. S. at 302.

⁶ Cf. *East v. Smith* (1847), 16 L. J. Q. B. 292, *sed qu?*

⁷ *Maxwell v. Brain* (1864), 10 L. T. N. S. 301; Cf. *Paul v. Joel* (1858), 27 L. J. Ex. 381.

⁸ *Houlditch v. Cauty* (1838), 4 Bing. N. C. 411; Cf. *Paul v. Joel* (1858), 27 L. J. Ex. at 384.

⁹ *Metcalfe v. Richardson* (1852), 11 C. B. 1011.

¹⁰ *Houlditch v. Cauty* (1838), 4 Bing. N. C. at 419; Cf. *Paul v. Joel* (1858), 27 L. J. Ex. at 384.

Notice of dishonour, requisites in form. wife that he has brought back the bill dishonoured. The wife says she will tell her husband. This may be sufficient.¹

2. The holder's clerk goes to the drawer and tells him that his bill has been presented, and that the acceptor cannot pay it. The drawer replies that he will see the holder about it. This may be sufficient.²

3. A notary's clerk takes the bill, with the notary's ticket attached, to the drawer's office, and shows it to a clerk there. The clerk looks at it, says the drawer is out and has left no orders. The notary then leaves the usual notice that the bill is due at his office. This may be sufficient.³

Excuses for not giving notice of dishonour.

Art. 200. Notice of dishonour is dispensed with—

(1.) When the drawer or indorser sought to be charged is as between the parties to the bill the principal debtor, and has no reason to expect that it will be honoured on presentment.

ILLUSTRATIONS.

1. A. draws a bill on B, who is under no obligation to accept or pay it, and has not held out that he will do so. It is presented and dishonoured. A. is not entitled to notice.⁴

2. A. draws a bill on B. payable at his own house. B. accepts it. *Primâ facie* this is an accommodation bill for A.'s benefit, and he is not entitled to notice.⁵

3. A. signs a bill as drawer in order to accommodate the acceptor. A. is entitled to notice.⁶

4. A., having a small balance in B.'s hands, draws on him for a larger sum. B. accepts, but does not pay. A. is entitled to notice.⁷

¹ *Housoy v. Courne* (1837), 2 M. & W. 348.

² *Metcalfe v. Richardson* (1852), 11 C. B. 1011.

³ *Viale v. Michael* (1874), 30 L. T. N. S. 463. For further illustration, see *Phillips v. Gould* (1838), 8 C. & P. 355; *East v. Smith* (1847), 16 L. J. Q. B. 292; *Chard v. Fox* (1849), 14 Q. B. 200; *Jennings v. Roberts* (1855), 24 L. J. Q. B. 102.

⁴ *Bickerdike v. Bollman* (1786), 2 Smith L. Ca., 7 ed. 50, and notes; *Claridge v. Dalton* (1815), 4 M. & S. 225; *Dickins v. Beal* (1836), 10 Pet. 572, Sup. Ct. U. S.; *Wirth v. Austin* (1875), 10 L. R. C. P. 689.

⁵ *Sharp v. Bailey* (1829), 9 B. & C. 44; Cf. *Carter v. Flower* (1847), 16 M. & W. 743.

⁶ *Sleigh v. Sleigh* (1850), 5 Exch. 514.

⁷ *Thackray v. Blackett* (1812), 3 Camp. 164; Cf. *Bagnall v. Andrews* (1830), 7 Bing. at 222.

5. A., having a balance of 10*l.* at his banker's, and having no authority to overdraw, draws a cheque for 50*l.* A. is not entitled to notice.¹ Excuses for not giving notice of dishonour.

6. A. draws, B. accepts, and C. indorses a bill in order to accommodate D., the second indorser. If the bill is dishonoured, A. and C. are entitled to notice.²

7. A. draws and B. accepts a bill to accommodate X., who is not a party to it, but who is to provide for it. A. is entitled to notice of dishonour.³

8. A. draws, B. accepts, and C. indorses a bill in order to raise money for their joint benefit. A. and C. are entitled to notice.⁴

NOTE.—Cf. Art. 90, accommodation bill defined, and Art. 168, excuses for non-presentment. The acceptor is the principal debtor on the face of the instrument, but evidence is admissible to show that he is in reality a mere surety, and that some other person is ultimately liable.⁵ As to French law, see Art. 190, n.

(2.) As regards the drawer, when drawer and drawee are the same person, or identical in interest.⁶

(3.) When the drawer or indorser sought to be charged is the person to whom the bill is presented for payment.

ILLUSTRATION.

The indorser of a bill becomes the executor of the acceptor. It is presented to him and he refuses to pay it. He is not entitled to notice.⁷

(4.) When the drawee is a fictitious person, or (perhaps) a person not having capacity to contract, and the drawer or indorser sought to be

¹ *Carew v. Duckworth* (1869), 4 L. R. Ex. 313.

² *Cory v. Scott* (1820), 3 B. & Ald. 619; *Turner v. Samson* (1876), 2 L. R. Q. B. D. 22, C. A.

³ *Lafitte v. Slatter* (1830), 6 Bing. 623.

⁴ *Foster v. Parker* (1876), 2 L. R. C. P. D. 18.

⁵ Cf. *Cook v. Lister* (1863), 32 L. J. C. P. at 127, per Willes, J.

⁶ Art. 2, Expl. 3; and *Porthouse v. Parker* (1807), 1 Camp. 82.

⁷ *Cavant v. Thompson* (1849), 18 L. J. C. P. 125.

Excuses
for not
giving
notice of
dishonour.

charged was aware of the fact at the time he drew or indorsed the bill.¹

(5.) When the bill is void for want of a stamp.²

NOTE.—In this case the action must be brought on the consideration. The same reasoning would apply to a bill avoided by an alteration in the hands of an innocent holder.

(6.) When, after the exercise of reasonable diligence, notice of dishonour cannot be given to or does not reach the party sought to be charged.³

Explanation 1.—Reasonable diligence is a question of fact.⁴

ILLUSTRATIONS.

1. The holder of a dishonoured bill goes to the drawer's place of business during business hours to give him notice of dishonour. He finds the place shut and no one there of whom to make inquiries. This may excuse notice.⁵

2. The holder of a bill duly addresses and posts a notice of dishonour. It is lost in the post. The drawer or indorser to whom it was sent is not discharged.⁶

3. The holder of a dishonoured bill does not know the indorser's address. He makes some inquiry, but does not take the steps he reasonably might have done. The indorser is discharged.⁷

4. A bill is accidentally destroyed before maturity. The holder gives notice of the fact to the drawer. At maturity the holder cannot obtain payment. He must give notice of dishonour to the drawer.⁸

Explanation 2.—The fact that the drawer or indorser sought to be charged has reason to believe that the bill will, on presentment, be dishonoured, does

¹ *Leach v. Hewitt* (1813), 4 Taunt. 731; *Smith v. Bellamy* (1817), 2 Stark. 223; Cf. Arts. 2, 155, 168.

² *Cundy v. Marriott* (1831), 1 B. & Ad. 696.

³ Cf. *Berridge v. Fitzgerald* (1869), 4 L. R. Q. B. at 642, and Art. 168.

⁴ *Bateman v. Joseph* (1810), 2 Camp. at 462.

⁵ *Allen v. Edmundson* (1848), 2 Exch. at 723.

⁶ *Mackay v. Juddins* (1858), 1 F. & F. 208, Byles, J.; Cf. Arts. 193 and 194, n.

⁷ *Beveridge v. Burgis* (1812), 3 Camp. 262.

⁸ *Thackray v. Blackett* (1812), 3 Camp. 164; Cf. Art. 165.

not dispense with the necessity for giving him notice of dishonour.¹

Excuses
for not
giving
notice of
dishonour.

ILLUSTRATION.

The drawer or indorser of a bill has notice that the acceptor is bankrupt² or dead.³ He is entitled to notice of dishonour.

Explanation 3.—The bankruptcy or death of the drawer or an indorser does not dispense with the necessity for giving notice of dishonour to him or his representatives.⁴

(7.) By waiver express or implied.

Explanation 1.—Notice of dishonour may be waived before the time for giving notice has arrived, or after the omission to give notice.⁵

ILLUSTRATIONS.

1. The drawer of a bill tells the holder before it is due that he has no fixed residence, and that he will call in a few days to see if the acceptor has paid the bill. This waives notice.⁶

2. The drawer of a bill orders the drawee not to pay it. This (probably) waives notice.⁷

3. The drawer of a bill informs the holder that it will not be paid on presentment. This (probably) waives notice.⁸

4. The indorser of a bill receives no notice of dishonour. Six weeks after the dishonour he meets the holder and promises to pay the bill. This is a waiver of notice.⁹

5. A., the drawer of a bill, indorses it to C., who indorses it to D. On the day of dishonour, but before the fact of dishonour could be known, A., knowing the acceptor to be insolvent, says to C., "I suppose I shall have to take up the bill. If you will call

¹ Cf. *Carew v. Duckworth* (1869), 4 L. R. Ex. at 319; and Art. 188.

² *Esdaile v. Soverby* (1809), 11 East. 114; *Smith v. Becket* (1810), 13 East. 187; Cf. French Code, Art. 163.

³ Cf. *Caunt v. Thompson* (1849), 18 L. J. C. P. 125; French Code, Art. 163; *Pothier*, No. 147.

⁴ *Rhode v. Proctor* (1825), 4 B. & C. 517; and Art. 198.

⁵ Cf. *Cordery v. Colville* (1863), 32 L. J. C. P. 210; *Story*, § 320.

⁶ *Phipson v. Kellner* (1815), 4 Camp. 284; Cf. *Burgh v. Legge* (1839), 5 M. & W. 418.

⁷ *Hill v. Heap* (1823), D. & R. N. P. C. 57.

⁸ *Brett v. Levitt* (1811), 13 East. at 214.

⁹ *Cordery v. Colville* (1863), 32 L. J. C. P. 210.

Excuses
for not
giving
notice of
dishonour.

with it in a few days I will pay you." D. gives no notice of dishonour either to C. or A. D. cannot avail himself of the promise to C., and sue A.¹

6. A., the drawer of a bill, indorses it to C., who indorses it to D. Some time after the dishonour, A., who has received no notice, is informed by C. that D. the holder is going to sue him. A. says he will pay if D. will give him time. This is evidence of waiver of notice.²

NOTE.—Cf. Art. 121, as to express waiver. Art. 168, waiver of presentment.

Explanation 2.—Waiver of notice of dishonour in favour of the holder enures for the benefit of parties prior to such holder as well as subsequent holders.

ILLUSTRATION.

C. indorses a bill to D., who indorses it to E. If C. be sued by E., and let judgment go by default, he cannot set up want of notice of dishonour if he be subsequently sued by D.³

Explanation 3.—Waiver of notice of dishonour by an indorser does not affect prior parties.

ILLUSTRATION.

C., the payee of a bill, indorses it to D. D. gives notice of dishonour to C. one day late. C. waives the irregularity, takes up the bill and gives notice to the drawer. C. cannot sue the drawer.⁴

Explanation 4.—An acknowledgment of liability must be made with full knowledge of the facts in order to operate as a waiver of notice of dishonour.⁵

ILLUSTRATION.

A bill is refused payment at maturity. The indorser promises the holder to pay it, not knowing that it had been previously dishonoured by non-acceptance. This is no waiver.

¹ *Pickin v. Graham* (1833), 1 Cr. & M. 725.

² *Woods v. Dean* (1862), 32 L. J. Q. B. 1. See further, *Lecann v. Kirkman* (1859), 6 Jur. N. S. 17; *North Stafford Co. v. Wythies* (1861), 2 F. & F. 563; *Kilby v. Rochusson* (1865), 18 C. B. N. S. 357; *Sheldon v. Horton* (1870), 43 New York R. 93.

³ *Rabey v. Gilbert* (1861), 38 L. J. Ex. 170; Cf. Art. 194.

⁴ *Turner v. Leach* (1821), 4 B. & Ald. 451; Cf. Art. 192.

⁵ *Goodall v. Dolley* (1787), 1 T. R. 712; Cf. *Pickin v. Graham* (1833), 1 Cr. & M. at 729.

NOTE.—Many of the cases fail to distinguish between admissions of liability, which are evidence of due notice having been received, and admissions of liability when due notice has not been given, and which therefore are evidence of waiver. The distinction is important.¹

Art. 201. Delay in giving notice of dishonour is excused when such delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his negligence.

Explanation.—When the cause of delay ceases to operate, notice must be given with reasonable diligence.²

ILLUSTRATIONS.

1. The indorser of a bill gives a wrong address, or by his conduct misleads the holder as to his address. In consequence a notice posted in due time is a long while in reaching him. The delay is excused and the indorser is liable.³

2. The holder of a bill does not know the indorser's address. Delay occupied in making inquiries is excused.⁴

NOTE.—For further illustration and authority see Art. 169, and Art. 193. This article is an obvious deduction from the general rule (Art. 195) that notice of dishonour must be given within a reasonable time. The old system of pleading recognised the difference between excuses for delay and excuses for non-notice.⁵ When the delay is caused by the negligence of the party to whom notice is sent, it is conceived that though that party is bound he cannot give an effectual notice to antecedent parties.⁶

¹ As to what is evidence of due notice, see *Taylor v. Jones* (1809), 2 Camp. 105; *Hicks v. Beaufort* (1838), 4 Bing. N. C. 239; *Brownell v. Bonney* (1841), 1 Q. B. 39; *Curlewis v. Corfield* (1841), 1 Q. B. 814; *Campbell v. Webster* (1845), 15 L. J. C. P. 4; *Mills v. Gibson* (1847), 16 L. J. C. P. 249; *Jackson v. Collins* (1848), 17 L. J. Q. B. 142; *Bartholomew v. Hill* (1862), 5 L. T. N. S. 756. As to what is not, *Borradaile v. Lowe* (1811), 4 Taunt. 93; *Braithwaite v. Coleman* (1835), 4 N. & M. 654; *Bell v. Frankis* (1842), 4 M. & G. 446; *Holmes v. Staines* (1850), 3 C. & K. 19.

² *Firth v. Thrush* (1828), 8 B. & C. 387; *Gladwell v. Turner* (1870), 5 L. R. Ex. at 61.

³ *Hewitt v. Thompson* (1836), 1 M. & Rob. 548; *Berridge v. Fitzgerald* (1869), 4 L. R. Q. B. 639.

⁴ *Baldwin v. Richardson* (1823), 1 B. & C. 245.

⁵ *Allen v. Edmundson* (1848), 2 Exch. at 723.

⁶ Cf. *Shelton v. Braithwaite* (1841), 8 M. & W. at 254--255.

Excuses
for delay
in notice.

Overdue bill.—In America it is held that when a bill is indorsed after its maturity, the indorser is entitled to have it presented for payment, and to receive notice of dishonour within a reasonable time, he in effect having indorsed a bill payable on demand;¹ *aliter* if an indorser take up a dishonoured bill and re-issue it on his original indorsement, for his liability is already fixed.² Under German Exchange Law, Art. 16, the indorser of an overdue bill incurs no mercantile engagement.

Conflict of
laws.

Art. 202. Where laws conflict, the validity of a notice of dishonour, both as to form and time, is (probably) determined by the law of the place where the notice is given.³

ILLUSTRATION.

A., in England, draws and indorses to C. a bill payable in Spain. C. indorses it to D., in Spain. It is presented for acceptance and dishonoured. Fifteen days afterwards, D. gives notice of dishonour to C. who immediately gives notice to A. By Spanish law no notice of dishonour by non-acceptance is necessary (Cf. Art. 157 n.). C. is liable to D., and if he pays him, he can sue A.⁴

NOTE.—It would be convenient to hold generally that the duties of the holder are to be determined by the law of the place where they are performed, but the cases certainly have not yet gone so far as this.

Notice to charge Acceptor, Maker, or Stranger.

Notice to
acceptor
unneces-
sary.

Art. 203. The acceptor of a bill of exchange is not in any case entitled to notice of dishonour.⁵

ILLUSTRATION.

B. accepts a bill payable at his bankers. It is presented there and dishonoured. No notice need be given to B.⁶

¹ *Patterson v. Todd* (1852), 18 Pennsylvania R. 433; Cf. *Dehors v. Harriot* (1682), 1 Show. 164.

² *St. John v. Roberts* (1865), 31 New York R. 441.

³ *Hirschfeld v. Smith* (1866), 1 L. R. C. P. 340; *Horne v. Rouquette* (1878), 3 L. R. Q. B. D. 514, C. A., July 6; *Pothier*, No. 155; Cf. Art. 180.

⁴ *Horne v. Rouquette*, *supra*.

⁵ Cf. *Rowe v. Tipper* (1853), 22 L. J. C. P. at 137; *Pearse v. Pemberthy* (1812), 3 Camp. 261, maker of promissory note.

⁶ *Treacher v. Hinton* (1821), 4 B. & Ald. 413.

Art. 204. A person who has given a guarantee for ^{Guarantor.} the payment of a bill by the acceptor is not entitled to notice of dishonour. Cf. Art. 173.

ILLUSTRATIONS.

1. The indorser of a bill gives a bond to secure its payment. Want of notice of dishonour is no defence to an action on the bond.¹

2. X. gives a guarantee for the price of goods to be supplied to the acceptor of a bill. X. is not entitled to notice of dishonour.²

3. X. gives a guarantee for the price of goods to be supplied to the drawer of a bill. X. is entitled to notice of dishonour.³

4. X. guarantees the payment of a note "if it be not duly honoured and paid" by the maker. X. is not entitled to notice of dishonour.⁴

NOTE.—In America the cases conflict. The balance of authority inclines to the view that notice of dishonour need not be given to a guarantor.⁵ It is prudent to give a guarantor some notice.

Art. 205. A person who is not a party to a bill, but ^{Person} who is liable on the consideration for which it is ^{liable on} given,⁶ is (probably) entitled to notice of dishonour. ^{considera-} Cf. Art. 174.

ILLUSTRATIONS.

1. X. buys goods from D. to be paid for "by approved banker's bill." C., who is X.'s broker, obtains a banker's bill payable to his own order and indorses it to D. If the bill be dishonoured, X. (probably) is not liable for the price of the goods, unless he receives notice of dishonour.⁷

2. C., the holder of a note payable to bearer on demand, transfers it to D., without indorsing it, to pay for goods supplied by D. If

¹ *Murray v. King* (1821), 5 B. & Ald. 165.

² *Holbrow v. Wilkins* (1822), 1 B. & C. 10.

³ *Philips v. Astling* (1809), 2 Taunt. 206; Cf. *Hitchcock v. Humphrey* (1843), 5 M. & Gr. at 564.

⁴ *Walton v. Mascal* (1844), 13 M. & W. 72, see also at 452.

⁵ See e.g. *Brown v. Curtis* (1849), 2 New York R. 225, *contra Foote v. Brown* (1841), 2 McClean 369.

⁶ Of Arts. 224, 225.

⁷ *Smith v. Mercer* (1867), 3 L. R. Ex. 51, *contra Swinyard v. Bowes* (1816) 3 M. & S. 62, not cited.

Person
liable on
considera-
tion.

the note be dishonoured, C. is not liable for the price of the goods, unless he receive notice of dishonour.¹

NOTE.—It seems from the last cited cases¹ that the same strict and technical notice of dishonour is not requisite to charge a person liable on the consideration as is requisite to charge a party liable on the bill. This is fair, for in the one case the liability is transferable, in the other it is not, and therefore all defences between the parties can be inquired into. A distinction might be drawn between persons liable on the consideration who have, and who have not, been holders of the bill.²

Duties on receiving Payment.

Duty to
give up
bill.

Art. 206. It is the duty of the holder to deliver up the bill when it is paid in due course, by or on behalf of the drawee or acceptor.³ Cf. Art. 165.

Exception 1.—Non-negotiable note.⁴

Exception 2.—The person who was the holder of a bill is (perhaps) entitled to receive payment, without giving it up, on proof of its destruction.⁵

NOTE.—Cf. Arts. 140 and 144 as to lost bills, and Arts. 27 and 29 as to the parts of a set. Giving up the bill is a concurrent condition, and not a condition precedent to payment. German Exchange Law, Arts. 38—39, provides that the holder must take part payment if it be offered. In that case he may retain the bill, but must indorse upon it the amount he has received.

Duty to
give
receipt.

Art. 207. The holder of a bill for 2*l.* or upwards is

¹ *Camidge v. Allenby* (1827), 6 B. & C. 373; *Turner v. Stones* (1843), 1 D. & L. 122; *Robson v. Oliver* (1847), 10 Q. B. 707, cases on country bank notes; Cf. Art. 225.

² Cf. *Camidge v. Allenby* (1827), 6 B. & C. at 381.

³ *Hansard v. Robinson* (1827), 7 B. & C. at 94; *Crowe v. Clay* (1854), 9 Exch. 604, Ex. Ch.; German Exchange Law, Art. 39; Cf. *Jones v. Broadhurst* (1850), 9 C. B. at 182, as to payment by drawer or indorser; and *Corner v. Taylor* (1854), 10 Exch. 441; *Woodward v. Pell* (1868), 4 L. R. Q. B. 55, lien for costs.

⁴ *Charn'ey v. Grundy* (1854), 14 C. B. at 614; Cf. Art. 107.

⁵ *Wright v. Maidstone* (1855), 24 L. J. Ch. 623.

(perhaps) bound, subject to a penalty of 10*l.*, to give ^{Duty to} a receipt on obtaining payment.¹ Such receipt may ^{give} be written on the bill, and in that case does not ^{receipt.} require a stamp.²

NOTE.—The doubt is created by the terms of § 123, inasmuch as the receipt on a bill is exempt from duty. The payor clearly cannot refuse to pay because the payee refuses to give a receipt.³

¹ Stamp Act, 1870, 33 & 34 Vict. c. 97, §§ 121—123.

² Stamp Act, 1870, Sched., tit. Receipt.

³ *Laing v. Meader* (1824), 1 C. & P. 257.

CHAPTER VI.

LIABILITIES OF PARTIES.

Drawee and Drawer.

Duty to
accept or
pay.

Art. 208. The drawee of an unaccepted bill of exchange is not bound to accept or pay it, unless he has for valuable consideration expressly or impliedly agreed so to do. If he has so agreed his relations with the drawer are regulated by the terms of the particular agreement between them.¹

Exception.—Cheque on a banker.²

NOTE.—In some continental countries the duty to accept or pay bills arises from the mere relationship of debtor and creditor in a mercantile transaction;³ whereas here there must be an agreement founded on consideration. Apart from something special in the contract, it seems that the authority or obligation to accept is not revoked by the death of the drawer,⁴ while it is by notice of his bankruptcy; for this renders funds in the hands of the drawee no longer available for the payment of the bill, and incapacitates the drawer from fulfilling his part of the contract.⁵ The bankruptcy of

¹ *Chitty*, p. 200; Cf. *Goodwin v. Roberts* (1875), 10 L. R. Ex. at 351, Ex. Ch.; see e.g. *Smith v. Brown* (1815), 6 Taunt. at 344; *Laing v. Barclay* (1823), 1 B. & C. 398; *Huntley v. Sanderson* (1833), 1 Cr. & M. 467 (agent authorised to draw on principal; contract of indemnity); *Cumming v. Shand* (1860), 29 L. J. Ex. at 132 (implied agreement to let customer overdraw); *English Credit Co. v. Arduin* (1871), 5 L. R. H. L. 64 (construction of credit).

² Art. 260; Cf. *Goodwin v. Roberts* (1875), 10 L. R. Ex. at 351.

³ *Pothier*, No. 92; *Nouguier*, § 442; Belgian Code de Commerce, Art. 8.

⁴ *Chitty*, p. 193; *Story*, § 250; *Cutts v. Perkins* (1815), 12 Massachusetts R. 206; Cf. *Billings v. Devaux* (1841), 3 M. & Gr. at 574; *Att.-Genl. v. Pratt* (1874), 9 L. R. Ex. 140.

⁵ *Pothier*, No. 96; Cf. *Citizens Bank v. New Orleans Bank* (1873), 6 L. R. H. L. 352

the drawee is not *per se* a breach of contract with the drawer.¹ In France the engagement between drawer and drawee is held to be a contract of "mandat," and their relations are regulated accordingly.² *Letter of advice.*—It is usual, but not necessary, for the drawer to advise the drawee of drafts drawn on him by letter of advice.³

Art. 209. When the drawee breaks his contract with the drawer by dishonouring his draft, the consequences reasonably resulting from the breach of contract constitute the measure of damage.⁴

ILLUSTRATIONS.

1. A customer having a balance of 200*l.* at his banker's draws a cheque for 100*l.*, or accepts a bill for 100*l.* payable at his bankers. If this cheque or bill is dishonoured he may recover substantial damages for the injury to his credit, without proving any actual loss.⁵

2. A., in a foreign country, draws on B., in England, under a letter of credit. B. dishonours his draft. A. may recover the re-exchange and notarial expenses which he has had to pay to the holder,⁶ and also the cost of telegrams, etc., consequent on the dishonour.⁷

NOTE.—Although an acceptor, as such, may not be liable for re-exchange, it is clear that the drawee by accepting cannot alter or escape from his special contract with the drawer; and this may be the ground of his liability for re-exchange, etc., when sued by the drawer. Cf. Art. 213*n.*

¹ *Re Aggra Bank* (1867), 5 L. R. Eq. 160.

² *Pothier*, No. 91—100; *Bravard-Demangeat*, 7 ed. 219; Code Civil, Art. 1984—2010.

³ *Arnold v. Cheque Bank* (1876), 1 L. R. C. P. D. at 586; *Nouguier*, §§ 271—284.

⁴ *Prehn v. Royal Bank of Liverpool* (1870), 5 L. R. Ex. 92; Cf. *Isley v. Jones* (1858), 78 Massachusetts, R. 260, accommodation bill.

⁵ *Rollin v. Steward* (1854), 23 L. J. C. P. 148; Cf. *Cumming v. Shand* (1860), 29 L. J. Ex. 129; *Summers v. City Bank* (1874), 9 L. R. C. P. 580.

⁶ *Walker v. Hamilton* (1860), 1 De G. F. & J. 602; *Re General South American Co.* (1877), 7 L. R. Ch. D. 687.

⁷ *Prehn v. Royal Bank of Liverpool* (1870), 5 L. R. Ex. 92.

Drawee and Holder.

No
privity
between
drawee
and
holder.

Art. 210. The drawee of a bill, as such, incurs no liability to the holder, and there is no privity of contract between them.¹

ILLUSTRATION.

A., having 100*l.* at his banker's, draws a cheque on them for that sum in favour of C. The cheque is dishonoured. C. has no remedy against the bankers.²

NOTE.—Similarly, when a bill is accepted payable at a banker's, there is no privity between the drawer or holder and the acceptor's banker.³ In France, when the drawee has funds, drawing a bill operates as an assignment of them in favour of the holder, and creates a privity between holder and drawee.⁴

Explanation.—Such privity may be created by agreement external to the bill, and the relations of the parties are then regulated by the terms of such agreement.⁵

ILLUSTRATIONS.

1. B. gives A. an open letter of credit authorizing him to draw to the extent of 10,000*l.*, and concluding "parties negotiating bills under it are requested to indorse particulars on the back hereof." A. accordingly draws a bill for 500*l.* in favour of C., who duly indorses the particulars on the credit. B. becomes insolvent, and dishonours the bill on presentment. C. can prove for 500*l.* against B.'s estate.⁶

2. A. draws a bill on B. in favour of C., and remits funds to meet it. B. does not accept the bill, but he tells C. that he has received the funds and promises to pay the bill. B. does not pay the bill. No action on the bill can be maintained against B., but C. can sue B. for money received to his use.⁷

¹ *Hopkinson v. Forster* (1874), 19 L. R. Eq. 74; *Carr v. Nat. Bank* (1871), 107 Massachusetts R. 45; Cf. *Vaughan v. Halliday* (1874), 9 L. R. Ch. 561.

² *Id.*; *Schroeder v. Central Bank* (1876), 34 L. T. N. S. 735.

³ *Hill v. Royds* (1869), 8 L. R. Eq. 290.

⁴ *Bravard-Demangeat*, 7th ed. 235; *Nouguier*, §§ 392—431.

⁵ *Robey v. Ollier* (1872), 7 L. R. Ch. 695; *Ranken v. Alfaro* (1877), 5 L. R. Ch. D. 786.

⁶ *Re Agra Bank* (1867), 2 L. R. Ch. 391; Cf. *Citizens Bank v. New Orleans Bank* (1873), 6 L. R. H. L. 352.

⁷ *Griffin v. Weatherby* (1868), 3 L. R. Q. B. 753.

Acceptor and Holder.

Art. 211. The drawee of a bill of exchange becomes, by accepting it, the principal debtor thereon.¹ As acceptor he undertakes that he will pay it according to the tenour of his acceptance.²

Acceptor's contract with holder.

NOTE.—See the primary and absolute liability of an acceptor distinguished from the secondary and contingent liability of a drawer or indorser by Bayley, J.,³ and Cresswell, J.⁴ As to the mutual relations of joint acceptors, see per Wilde, C. J.⁵ See also Arts. 38—40, as to general and qualified acceptances; and Art. 172, as to presentment for payment to charge acceptor.

Art. 212. The acceptor of a bill of exchange by the fact of acceptance conclusively admits and warrants to a *bonâ fide* holder—

Acceptor's estoppels.

- (1.) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw.⁶

ILLUSTRATIONS.

1. A bill purporting to be drawn by A. on B. in favour of C. is accepted by B. and then negotiated. B., the acceptor, cannot set up that A.'s signature is a forgery.⁷

2. A bill is drawn by A. on B. in favour of C. C. alters the amount from 10*l.* to 100*l.* and then indorses it away. B. subsequently accepts it. B., notwithstanding his acceptance, may (probably) set up the alteration as a defence.⁸

¹ *Philpot v. Bryant* (1828), 4 Bing. at 720.

² *Smith v. Vertue* (1860), 30 L. J. C. P. 56, see at 60 per Byles, J.; Cf. *Walton v. Mascall* (1844), 13 M. & W. at 458, Parke, B.; Cf. French Code, Art. 121; German Exchange Law, Art. 23.

³ *Rowe v. Young* (1820), 2 Bligh. H. L. at 467.

⁴ *Jones v. Broadhurst* (1850), 9 C. B. at 181.

⁵ *Harmer v. Steele* (1849), 4 Exch. at 13.

⁶ *Cooper v. Meyer* (1830), 10 B. & C. 468; *Nat. Park Bank v. Ninth Bank* (1871), 46 New York R. 77.

⁷ *Id.*; *Sanderson v. Collman* (1842), 4 M. & Gr. 209; Cf. *Orr v. Union Bank* (1854), 1 Macq. H. L. 513.

⁸ *White v. Cent. Nat. Bank* (1876), 64 New York R. 316; Cf. *Burchfield v. Moore* (1854), 23 L. J. Q. B. 261.

Acceptor's
estoppels.

- (2.) In the case of a bill payable to drawer's order, the *then* capacity of the drawer to indorse,¹ but not the genuineness of his indorsement,² or (apparently) his authority to indorse.³

NOTE.—The distinction between capacity and authority (Cf. Art. 61) reconciles the cases. It is clear that capacity to draw must coincide with capacity to indorse, this being a question of status; while an authority to draw on behalf of another need not include an authority to indorse. The evidence of course may create an estoppel where the acceptance does not (Cf. Arts. 81, 139). When the drawer of a bill payable to drawer's order is a fictitious person, the acceptor probably undertakes to pay to an indorsement in the same handwriting as the drawer's signature.⁴

- (3.) (Probably) in the case of a bill payable to a third person, the existence of the payee and his *then* capacity to indorse,⁵ though not the genuineness of his indorsement.⁶

NOTE.—The point has not arisen fairly. The maker of a note warrants the *then* capacity of the payee, but maker and payee are immediate parties, while acceptor and payee are not. The acceptor of course may be estopped by the evidence: see Art. 139 as to fictitious payee; see also Art. 81 for cases where a man may be precluded from saying that a false signature is not his own.

Damages
against
acceptor.

Art. 213. The acceptor of a bill of exchange who dishonours it is liable for—

- (1.) The amount of the bill with interest (a) from the maturity thereof if the bill be payable on

¹ *Braithwaite v. Gardiner* (1846), 8 Q. P. 473, bankrupt; *Smith v. Marsack* (1848), 18 L. J. C. P. 65, married woman; *Halifax v. Lyle* (1849), 3 Exch. 464, corporation not having power to issue bills.

² *Beeman v. Duck* (1843), 11 M. & W. 251; Cf. *Smith v. Chester* (1877) 1, T. R. 654, and *passim* *Roberts v. Tucker* (1851), 16 Q. B. 560.

³ *Robinson v. Yarrow* (1817), 7 Taunt. 455, bill drawn and indorsed "per proc." without authority; *Garland v. Jacob* (1873), 8 L. R. Ex. 216, Ex. Ch., bill drawn and indorsed by partner in non-trading firm without authority.

⁴ *Cooper v. Meyer* (1830), 10 B. & C. 468; but see dicta that such a bill is payable to bearer *Beeman v. Duck* (1843), 11 M. & W. at 256; Cf. *Phillips v. Im Thurn* (1866), 1 L. R. C. P. at 471.

⁵ *Byles*, p. 199; *Daniel*, § 536; Cf. *Drayton v. Dale* (1823), 2 B. & C. 293 at 299.

⁶ Cf. *Roberts v. Tucker* (1851), 16 Q. B. 560, Ex. Ch.

a day certain,¹ or (b) from the time of present-
ment for payment if the bill be payable on
demand.² Damages
against
acceptor.

Explanation.—Interest in the nature of damages may, if justice require it, be withheld wholly or in part,³ and when a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.⁴

NOTE.—As to interest proper see Art. 13, Expl. 4. The bill must be produced at the trial to entitle the plaintiff to interest before writ.⁵ By French Code, Art. 184, interest runs against all parties from the day of protest for non-payment.

- (2.) As special damage, the notarial expenses consequent on dishonour,⁶ and (perhaps) the loss on re-exchange incurred by an indorser who has taken up or paid the bill.⁷

NOTE.—The decisions might be reconciled by holding that the acceptor, as such, is not liable to the holder for re-exchange, but that he is liable to the drawer for re-exchange by reason of the special contract between drawer and drawee, see Art. 209; but perhaps the older cases would now be overruled if the point was raised directly.

Art. 214. When laws conflict the measure of Conflict of
laws as to
damage.

¹ *Lithgo v. Lyon* (1805), Coop. Ch. Ca. 29; *Laing v. Stone* (1828), 2 M. & Ry. 562.

² *Re East of England Banking Co.* (1868), 4 L. R. Ch. 14.

³ *Laing v. Stone* (1828), 2 M. & Ry. 562; see also e.g. *Dent v. Dunn* (1812), 3 Camp. 296, tender; *Murray v. East India Co.* (1821), 204, holder dead and payment not demanded; *Phillips v. Franklin* (1828), Gow. 196, bill specially payable, no demand at place of payment proved; Cf. *Bann v. Dalryell* (1828), M. & M. 228.

⁴ *Keene v. Keene* (1857), 27 L. J. C. P. 88; see *Ward v. Morrison* (1842), Car. & M. 368, rate reduced.

⁵ *Hutton v. Ward* (1850), 15 Q. B. 26.

⁶ Cf. *Kendrick v. Lomax* (1832), 2 Cr. & J. 405, noting and postage, *Bullen v. Leake*, 3 ed., pp. 94 and 104; see *passim* 18 & 19 Vict. c. 67, § 5.

⁷ *Re General South American Co.* (1877), 7 L. R. Ch. D. 637, see at 644; *Pothier*, No. 117; *Story*, § 398; but *contra* *Napier v. Schneider* (1810), 12 East. 420; *Woolsey v. Crawford* (1810), 2 Camp. 445; *Dawson v. Morgan* (1829), 9 B. & C. at 620; *Byles*, p. 412.

Conflict of laws as to damage. damage against the acceptor is determined by the law of the place of payment.

ILLUSTRATION.

A bill drawn and accepted in France is by the acceptance made payable in London. Damages against the acceptor are to be assessed according to English law.¹

Drawer or Indorser and Holder.

General liability of drawer.

Art. 215. The drawer of a bill of exchange engages that on due presentment it shall be accepted and paid according to its tenour, and that if it be not so accepted and paid he will indemnify the holder, provided due notice of dishonour be given.

The drawer and indorsers of a bill are jointly and severally responsible to the holder for the due acceptance and payment thereof.²

NOTE.—See the liabilities of the drawer stated in general terms by Lord Lyndhurst,³ Parke, B.,⁴ Lord Kingsdown,⁵ Cresswell, J.,⁶ and Alderson, B.⁷ The liability of the drawer of an accepted bill must in general be measured by that of the acceptor, their relations being those of principal and surety.⁸

Drawer's estoppels.

Art. 216. The drawer of a bill of exchange payable to the order of another person, by the fact of drawing it, conclusively admits and warrants to a *bonâ fide* holder the existence of the payee and his *then* capacity to indorse.⁹

¹ *Cooper v. Waldegrave* (1840), 2 Beav. 282.

² Cf. 18 & 19 Vict. c. 67, § 6; *Rouquette v. Overman* (1875), 10 L. R. Q. B. at 537; French Code, Art. 118; German Exchange Law, Arts. 8 and 49.

³ *Siggers v. Lewis* (1834), 1 C. M. & R. at 371, cause of action.

⁴ *Whitehead v. Walker* (1842), 9 M. & W. at 516, non acceptance.

⁵ *Allen v. Kemble* (1848), 6 Moore P. C. at 321, *compensatio*.

⁶ *Jones v. Broadhurst* (1850), 9 C. B. at 181, payment.

⁷ *Gibbs v. Fremont* (1853), 9 Exch. at 30, damages.

⁸ *Rouquette v. Overman* (1875), 10 L. R. Q. B. at 536; but cf. *Mellish v. Simeon* (1794), 2 H. Bl. 378 for an exception.

⁹ *Collis v. Emmet* (1791), 1 H. Bl. 513; Cf. *Phillips v. Im Thurn* (1865), 18 C. B. N. S. 694, see at 701; Cf. Art. 139.

Art. 217. Any person who signs a negotiable bill otherwise than as drawer or acceptor *prima facie* incurs the liability of an indorser. Cf. Arts. 111, 112. Who
liable as
indorser.

Exception.—Indorsement by way of receipt.¹

ILLUSTRATIONS.

1. D. is the holder of a bill already indorsed in blank and therefore negotiable by mere delivery. He indorses it to E. D. thereby incurs the liabilities of an indorser.²

2. B. makes a note payable to C. or order. After it is issued, D., to accommodate the maker, signs his name on the face of the note. D. is liable as an indorser.³

3. B. and C. are indebted to A. A. draws a bill for the amount on B., payable to his own order, and indorses it in blank. B. accepts the bill. C. also writes his name on the face of the instrument. If B. does not pay it, C. may be sued as indorser.⁴

4. C. signs his name on the back of a blank stamped paper. It is afterwards filled up as a bill for 100*l*. C. is liable as an indorser of that bill.⁵

NOTE.—Formerly, when a person who was not the holder indorsed a bill, a pleading difficulty arose as to whether he was to be described as an indorser or as a new drawer. The difficulty was purely technical, for the consequences are identical. Now it would be sufficient to state the facts. The truth is that when a person who is not the holder backs a bill, he is not an indorser, but a quasi-indorser. The law annexes to his act liabilities similar to those which follow the indorsement of a bill by the holder (Cf. Arts. 111 and 112.) In some American states he is regarded as an ordinary guarantor.⁶ The liabilities of the indorser of a non-negotiable bill or note are not clear. It seems he is not entitled to notice of dishonour.⁷ In New York he is regarded as an ordinary guarantor.⁸ As to indorser of overdue bill, see Art. 201, n.

¹ Cf. *Keene v. Beard* (1860), 8 C. B. N. S. at 382, Byles, J.

² Cf. *Fairclough v. Paria* (1850), 9 Exch. at 695, and Arts. 109, 119.

³ *Ex parte Yates* (1858), 2 De G. & J. 191; Cf. *Gwinnell v. Herbert* (1836), 6 N. & M. 723.

⁴ *Young v. Glover* (1857), 3 Jur. N. S. 637, Q. B.; Cf. *Jackson v. Hudson* (1810), 2 Camp. 447.

⁵ *Matthews v. Bloxome* (1864), 33 L. J. Q. B. 209; Cf. *Foster v. Mackinnon* (1869), 4 L. R. C. P. at 712, and Art. 23.

⁶ Cf. *Jones v. Goodwin* (1870), 2 Amer. R. 475, cases reviewed.

⁷ *Plimley v. Westley* (1835), 2 Bing. N. C. 249; Cf. *Gwinnell v. Herbert* (1836), 6 N. & M. at 726; *Jackson v. Slipper* (1869), 19 L. T. N. S. 640.

⁸ *Cromwell v. Hewitt* (1869), 40 New York R. 491, cases collected.

General
liability of
indorser.

Art. 218. The indorser of a bill is in the nature of a new drawer.¹ Cf. Art. 215.

He engages that on due presentment it shall be accepted and paid according to its (then ?) tenour, and that if it be not so accepted and paid he will indemnify the holder, provided due notice of dishonour be given.²

NOTE.—Is the indorser a new drawer of the same bill or a similar bill? The point has not fairly arisen. Lush, J., regards him as a new drawer of the same bill;³ but Alderson, B., regards the point as doubtful.⁴ See, too, Art. 60. For instance, a bill drawn in France is indorsed in England. Are damages to be assessed according to English or French law? Again, a bill which has been accepted conditionally is subsequently indorsed. Is the indorser liable according to the tenour of the bill or of the acceptance?

Indorser's
estoppels.

Art. 219. The indorser of a bill, by the fact of indorsing it, conclusively admits and warrants to a *bonâ fide* holder the genuineness and regularity in all respects of the drawer's signature and all previous indorsements.⁵

The indorser also warrants to his immediate indorsee that the bill is a valid and subsisting bill, and that he has a good title thereto.⁶

Damages
against
drawer or
indorser.

Art. 220. The drawer or indorser of a dishonoured bill is liable for damages at the following rates:—

(1.) *Inland bill*. The amount of the bill with interest⁷ from (probably) the time of dishonour.⁸

¹ *Penny v. Innes* (1834), 1 C. M. & R. at 441, Parke, B.

² *Suse v. Pompe* (1860), 30 L. J. C. P. at 78, Byles, J.; German Exchange Law, Art. 14.

³ Cf. *Lebel v. Tucker* (1867), 3 L. R. Q. B. at 81.

⁴ *Gibbs v. Fremont* (1853), 9 Exch. at 31.

⁵ *Ex parte Clarke* (1792), 3 Brown C. C. 238; *Thicknase v. Bromilow* (1832), 2 Cr. & J. 425; *McGregor v. Rhodes* (1856), 6 E. & B. 260.

⁶ *Burchfield v. Moore* (1854), 23 L. J. Q. B. 261; Cf. Art. 226.

⁷ *Windle v. Andrews* (1819), 2 B. & Ald. 696.

⁸ *Keene v. Keene* (1857), 3 C. B. N. S. 144; Cf. Art. 213, and *Ackerman v. Ehrensperger* (1846), 16 M. & W. at 103.

Explanation.—Interest in the nature of damages may, if justice require it, be withheld wholly or in part;¹ and when a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.²

Damages
against
drawer or
indorser.

NOTE.—In one case it was said that interest as damages could only be recovered from the drawer or indorser from the time when he received notice of dishonour.³ But the case must be regarded as one when the jury under the circumstances exercised their discretion and withheld interest. When a bill is dishonoured by non-acceptance it would seem on principle that interest should only be allowed from its maturity, but the practice appears to be otherwise.⁴ By French Code, Art. 184, interest accrues from the day of protest for non-payment, and by German Exchange Law, Art. 50, from the day of non-payment. When an inland bill payable after date is protested, it is conceived that the statutory cost, 2s., could be recovered, but in other cases it is doubtful if the expenses of noting or postage could be claimed, unless under 18 & 19 Vict. c. 67, s. 5.⁵

(2.) *Foreign bill of exchange.* The amount of the bill with interest from the time of dishonour, and the notarial expenses, or if it be payable abroad, the re-exchange, interest and expenses.⁶

Art. 221. “Re-exchange” means the loss resulting from the dishonour of a bill of exchange in a country different to that in which it was drawn or indorsed.⁷

Re-
exchange
and re-
draft.

The re-exchange is ascertained by proof of the sum

¹ *Laing v. Stone* (1828), 2 M. & Ry. 562, and Art. 213.

² *Keene v. Keene* (1857), 3 C. B. N. S. 144, and Art. 213.

³ *Walker v. Barnes* (1813), 5 Taunt. 240; but cf. *Siggers v. Lewis* (1834), 1 C. M. & R. 370.

⁴ *Harrison v. Dickson* (1811), 2 Camp. 52 n.; Cf. *Suse v. Pompe* (1860), 8 C. B. N. S. at 566, re-exchange on non-acceptance.

⁵ Cf. *Leftley v. Mills* (1791), 4 T. R. 170, and *Kendrick v. Lomax* (1832), 2 C. & J. 405.

⁶ *Mellish v. Simeon* (1794), 2 H. Bl. 377, cumulative re-exchange against drawer; *Suse v. Pompe* (1860), 8 C. B. N. S. 538, see at 566, 567; Cf. *Willans v. Ayers* (1877), 3 L. R. Ap. Ca. 133 at 146; French Code, Arts. 177—186; German Exchange Law, 50—54.

⁷ Cf. *Willans v. Ayers* (1877), 3 L. R. Ap. Ca. at 146, P. C

Re-
exchange
and re-
draft.

for which a sight bill (drawn at the time and place of dishonour at the then rate of exchange on the place where the drawer or indorser sought to be charged resides) must be drawn in order to realise at the place of dishonour the amount of the dishonoured bill and the expenses consequent on its dishonour.¹

The holder may recoup himself by drawing a sight bill for such sum on either the drawer or one of the indorsers. Such bill is called a "Re-draft." The indorser who pays a re-draft may in like manner draw upon an antecedent party.²

ILLUSTRATION.

A., in England, draws a bill for 100*l.* on B., in Calcutta, payable there at a rate of exchange indorsed thereon. This entitles the holder to receive (say) Rupees 1000. The bill is dishonoured and the expenses of protest, etc., come to Rs. 10. The holder is then entitled to Rs. 1010 in Calcutta. At the time of dishonour sight bills on England are at 5 p. c. discount. Accordingly a sight bill on England for 106*l.* 1*s.* 0*d.*, would realise in Calcutta Rs. 1010. The holder may either draw a sight bill on A. for 106*l.* 1*s.* 0*d.*, and thus recoup himself, or he may sue A. in England for 105*l.* and interest, and 1*l.* 1*s.* 0*d.* expenses.

Explanation.—A custom according to which the holder may recover either the sum he gave for the bill or the re-exchange at his option is invalid,³ but a custom according to which a fixed rate of damages is substituted for re-exchange is (perhaps) valid.⁴

NOTE.—The term re-exchange is used to signify (1) the amount of a re-draft, (2) the loss on a particular transaction occasioned by the exchange being adverse, (3) the course of exchange itself, or (4) the right to the sum which would be secured by a re-draft; so

¹ *De Tastet v. Baring* (1809), 11 East. at 269; *Suse v. Pompe* (1860), 8 C. B. N. S. at 566—567; German Exchange Law, Art. 50.

² Cf. *Mellish v. Simeon* (1794), 2 H. Bl. 378; *Suse v. Pompe* (1860), 8 C. B. N. S. at 565; French Code, Art. 178; German Exchange Law, Art. 53.

³ *Suse v. Pompe* (1860), 8 C. B. N. S. 538.

⁴ *Willans v. Ayers* (1877), 3 L. R. Ap. Ca. at 144, P. C.

the context must always be looked to. When English law governs the right to re-exchange arises on dishonour by non-acceptance, as well as on non-payment.¹ Under the continental codes it only arises on dishonour by non-payment. For the reason see Art. 157, n. See the subject of re-exchange carefully worked out, German Exchange Law, Arts. 49—54; French Code, Arts. 177—186; *Nouguier*, §§ 1336—1366. Re-exchange and re-draft.

Art. 222. When laws conflict the measure of damages against the drawer is determinated by the law of the place where the bill was drawn,² and against an indorser (probably) by the law of the place where he indorsed the bill.³ Conflict of laws as to damages.

Transferor by delivery and Transferee.

Art. 223. The holder of a bill made or become payable to bearer, who negotiates it by delivery without indorsement, is called a "transferor by delivery." Transferor by delivery defined.

NOTE.—Cf. Art. 106, negotiation defined; Art. 107, what bills are payable to bearer, and Art. 104, transfer of bill payable to order without indorsement. When a bill is transferred by delivery absolutely, the transaction is frequently spoken of as a sale of the bill. See the two meanings of the term "sale of a bill," pointed out Art. 83, n.

Art. 224. A transferor by delivery incurs no liability on the instrument.⁴ Transferor not liable on instrument.

Art. 225. A transferor by delivery is not liable on the consideration in respect of which he has transferred the bill, if the bill be dishonoured.⁵ Liability on consideration.

¹ Cf. *Suse v. Pompe* (1860), 8 C. B. N. S. at 566.

² *Gibbs v. Fremont* (1853), 9 Exch. 25; *Re State Fire Ins. Co.* (1863), 32 L. J. Ch. 300.

³ Cf. *Allen v. Kemble* (1848), 6 Moore P. C. at 321; *Gibbs v. Fremont*, *supra* at 30, and Art. 60.

⁴ *Ex parte Roberts* (1789), 2 Cox. 171; *Fenn v. Harrison* (1790), 3 T. R. 757; Cf. *Ex parte Iabester* (1810), 1 Rose 21.

⁵ *Read v. Hutchinson* (1813), 3 Camp. 352; Cf. *Van Wart v. Wolley* (1824), 3 B. & C. at 445, Abbot, C. J.; *Evans v. Whyte* (1829), 5 Bing. 485.

Liability
on consi-
deration.

Exception 1.—Bill given in respect of an antecedent debt.¹

Exception 2.—A transferor by delivery is liable on the consideration to his immediate transferee when it appears that the transfer was not intended to operate in full and complete discharge of such liability.²

Explanation.—The transferee in order to avail himself of the above exceptions must use reasonable diligence in endeavouring to obtain payment, and in giving notice of dishonour or repudiating the transaction.³

ILLUSTRATIONS.

1. D., the holder of a bill for 100*l.* which has been indorsed in blank, discounts it with a banker for 90*l.*, without indorsing it. The bill is dishonoured. D. is not liable to refund the 90*l.*⁴

2. D. changes a banker's note or cashes a cheque payable to bearer for the convenience of the holder. If the bank has stopped payment, or the cheque is dishonoured, D. can recover the money.⁵

Warranty
of trans-
feror.

Art. 226. A transferor by delivery, whether liable on the consideration or not, warrants to his immediate transferee that the bill is what it purports to be,⁶ and that at the time of transfer he is not aware of any fact which renders it valueless.⁷

¹ *Ward v. Evans* (1703), 2 *Ld. Raym.* at 930; *Cf. Camidge v. Allenby* (1827), 6 *B. & C.* at 382, *Bayley, J.*, but *qu.* if this exception now applies to bank notes; *Guardians of Lichfield v. Greene* (1857), 26 *L. J. Ex.* at 142.

² *Van Wart v. Wolley* (1824), 3 *B. & C.* at 446, *Abbot, C. J.*

³ *Rogers v. Langford* (1833), 1 *Cr. & M.* 642; *Moule v. Brown* (1838), 4 *Bing. N. C.* 266; *Robson v. Oliver* (1847), 10 *Q. B.* 704. *Cf. Art.* 174.

⁴ *Bank of England v. Newman* (1700), 1 *Ld. Raym.* 442.

⁵ *Turner v. Stones* (1843), 1 *D. & L.* 122, note; *Woodland v. Fear* (1857), 26 *L. J. Q. B.* 202; *Cf. Timmins v. Gibbins* (1852), 18 *Q. B.* 722, notes paid in to a bank and credited to customer.

⁶ *Gompertz v. Bartlett* (1853), 23 *L. J. Ex.* 65, stamp previous to Stamp Act, 1870, § 52; *Cf. Burchfield v. Moore* (1854), 23 *L. J. Q. B.* 261; *Pooley v. Browne* (1862), 31 *L. J. C. P.* 134.

⁷ *Cf. Fenn v. Harrison* (1790), 3 *T. R.* at 769; *Camidge v. Allenby* (1827), 6 *B. & C.* at 382; *Lobdell v. Baker* (1842), 44 *Massachus. R.* 469; *Delaware Bank v. Jarvis* (1859), 20 *New York R.* 228; *Bridge v. Batchelor* (1864), 91 *Massachus. R.* 394.

ILLUSTRATIONS.

Warranty
of trans-
feror.

1. C. discounts with D. a bill payable to bearer without indorsing it. It turns out that, unknown to C., the amount of the bill had been fraudulently altered by a previous holder. D. can recover from C. the money he paid.¹

2. D., the *bonâ fide* holder of a bill purporting to be drawn by A., accepted by B., and indorsed in blank by C., discounts it with a banker. It turns out that the signatures of A. and B. were forgeries, and that C., whose indorsement was genuine, is insolvent. The banker can recover the money he paid from D.²

Explanation.—When the transferee discovers the defect in the bill, he must repudiate the transaction with reasonable diligence.³

NOTE.—There is some confusion in the cases owing to the distinction between the warranty of genuineness and the liability on the consideration having been lost sight of. The warranty of genuineness is an incident of the contract of sale, and it is immaterial whether the thing sold be a bill or any other personal chattel. The transferor is for this purpose an ordinary vendor.⁴ In New York the warranty is more extensive than in England. The transferor of a note warrants the solvency of the maker at the time of transfer.⁵ *Story on Notes*, § 118, says the transferor also warrants his title to the bill. This probably is so; but the question could hardly arise except in the case of an overdue bill. Cf. Arts. 137 and 134.

Acceptor suprâ protest and Holder, &c.

Art. 227. The acceptor *suprâ protest* engages that he will on presentment pay the bill according to the tenour of his acceptance if it be not paid by the drawee, provided it has been duly presented for

Liability
of acceptor
for honour.

¹ *Jones v. Ryde* (1814), 5 Taunt. 488.

² *Gurney v. Womersley* (1854), 24 L. J. Q. B. 46; *Marlham v. Wolcott* (1861), 85 Massachusetts R. 258.

³ *Pooley v. Browne* (1862), 81 L. J. Q. B. 134.

⁴ Cf. *Benjamin on Sale*, 2nd ed., pp. 332 and 493.

⁵ *Roberts v. Fisher* (1870), 43 New York R. 159.

Liability of acceptor for honour. payment and protested for non-payment, and that he has notice of these facts.¹

The acceptor *suprà protest* is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.²

NOTE.—Under French Code, Art. 127, and German Exchange Law, Art. 58, an acceptor *suprà protest* is bound to give notice of his acceptance to the person for whose honour he has accepted. The rights of the acceptor for honour arise on payment. Under German Exchange Law, Art. 65, however, an acceptor for honour who is not called on to pay the bill is nevertheless entitled to a commission of one-third per cent.

Estoppel binding acceptor for honour.

Art. 228. The acceptor *suprà protest* is bound by the estoppels which bind an ordinary acceptor, and also by the estoppels which would bind the party for whose honour he accepted.³

Accommodation Party and Person Accommodated.

Rights of accommodation party.

Art. 229. When a person draws, indorses, or accepts a bill for the accommodation of another, the person accommodated impliedly engages (a) that he will provide funds for the payment of the bill at maturity, (b) that if, owing to his omission so to do, the accommodation party is compelled to pay the bill, he will indemnify such party.⁴

ILLUSTRATIONS.

1. B. accepts a bill to accommodate the drawer. The drawer

¹ *Hoare v. Cazenore* (1812), 16 East. 391, see at 394; *Williams v. Germaine* (1827), 7 B. & C. at 475—477 (head-note incorrect); Cf. Arts. 179, 185, 186; Cf. German Exchange Law, Arts. 60, 62, 63.

² *Byles*, p. 268; *Bayley*, 6th ed., 178, no decision in point; Cf. Art. 244.

³ *Phillips v. Im Thurn* (1866), 1 L. R. C. P. at 471, S. C. on demurrer (1865), 18 C. B. N. S. 694; see e.g. Art. 139, Illust. 4; Cf. Arts. 212, 216, 219.

⁴ *Reynolds v. Doyle* (1840), 1 M. & Gr. 753; *Sleigh v. Sleigh* (1850), 5 Exch. at 516—517, Parke, B.; Cf. *Asprey v. Levy* (1847), 16 M. & W. 851.

sends funds to B. to provide for the bill, but becomes bankrupt before the bill matures. B. can retain those funds to pay the bill with.¹ Rights of accommodation party.

2. A. signs a bill as drawer to accommodate the acceptor. It is dishonoured. A. receives no notice of dishonour, but nevertheless pays half the amount of the bill to the holder. A. cannot recover this sum from the acceptor, for he has not paid under compulsion.²

3. B. accepts a bill to accommodate the drawer, but is not provided with funds to pay it. There is some *prima facie* defence against the holder. B. is sued, defends the action, and has to pay the amount of the bill and costs. B. can recover from the drawer the amount he paid, including the costs of defending the action.³

NOTE.—See accommodation bill and accommodation party defined, Art. 90. An accommodation party who is compelled to pay the bill has all the rights of an ordinary surety in such case, *e.g.* he is entitled to the benefit of all securities held by the creditor.⁴

¹ *Yates v. Hoppe* (1858), 19 L. J. C. P. 180.

² *Sleigh v. Sleigh* (1850), 5 Exch. 514.

³ *Stratton v. Matthews* (1848), 3 Exch. 48; *Baker v. Martin* (1848), 3 Barb. 634, New York, accommodation indorser; Cf. *Bagnall v. Andrews* (1830), 7 Bing. at 222; *Garrard v. Cottrell* (1847), 10 Q. B. 679, *aliter* if the action be defended without reasonable cause; *Roach v. Thompson* (1830), M. & M. 487; *Beech v. Jones* (1848), 5 C. B. 696.

⁴ *Bechervaise v. Lewis* (1872), 7 L. R. C. P. at 377; *Gray v. Seckham* (1872), 7 L. R. Ch. 680.

CHAPTER VII.

DISCHARGES.

Discharges in General.

Discharge
defined.

Art. 230. A bill is discharged when all rights of action thereon are extinguished. It then ceases to be negotiable, and if it subsequently comes into the hands of a *bonâ fide* holder for value without notice he acquires no right of action on the instrument.¹

ILLUSTRATION.

C. is in possession of a bill which has been discharged, *e.g.*, by payment in due course, or by an alteration. He indorses it to D., who indorses it to E. E. cannot sue either C. or D. as indorsers. He can only recover from D. the amount he paid for the bill, and D. in like manner can recover what he paid from C.²

NOTE.—A right of action on a bill must be distinguished from a right of action which a party to a bill may have arising out of the bill transaction, but wholly independent of the instrument. The former can be transferred by negotiating the instrument, the latter cannot. The former is extinguished by the discharge of the instrument, the latter may or may not be so. For example, if one of three joint acceptors pays a bill, it is discharged; but he personally has a right of contribution from his co-acceptors.³ If an accommodation acceptor pays a bill it is discharged, but he has a personal

¹ *Harmer v. Steele* (1849), 4 Exch. 1 Ex. Ch.; *Burchfield v. Moore* (1854), 23 L. J. Q. B. 261.

² *Burchfield v. Moore*, *suprd*; Cf. *Burbridge v. Mannors* (1812), 3 Camp. at 194, payment; *Cundy v. Marriott* (1831), 1 B. & Ad. 696, stamp.

³ *Harmer v. Steele* (1849), 4 Exch. at 14; see the converse, *Houle v. Baxter* (1802), 3 East. 177.

right of action for indemnity. If an acceptance be given for a debt, and the acceptance is paid, both the debt and the bill are discharged. *Discharge of parties.*—Again, the discharge of a bill must be distinguished from the discharge of one or more of the parties thereto, *e.g.*, the acceptor may be discharged by a discharge in bankruptcy while the drawer and indorsers are only liberated to the extent of the dividends or composition received by the holder;¹ or a particular indorser may be discharged by want of notice of dishonour, while the drawer and other indorsers remain liable; or again, an indorser may be discharged as regards a particular party, but not as regards subsequent parties.²

Art. 231. When laws conflict the validity and effect of a discharge is (in general) determined by the *lex loci contractus* of the party sought to be charged.³ Cf. Art. 60.

Discharge
when
laws
conflict.

ILLUSTRATIONS.

1. Bill accepted at Leghorn payable there. By the old law of Leghorn an acceptor could procure the cancellation of his acceptance if he had not at maturity received funds from the drawer. An acceptor so discharged at Leghorn cannot be sued in England.⁴

2. Bill drawn in the United States (and issued there) on a person in England is dishonoured by non-acceptance. The drawer cannot be sued in England if he has been discharged in America under the bankruptcy law there in force.⁵

3. Bill for 100*l.* drawn and issued in Demerara but accepted and payable in England. At the time the bill matures the holder owes the acceptor 100*l.* According to Demerara law this operates as a discharge of the bill (by *compensatio*). The drawer is discharged.⁶

4. Accommodation bill drawn and issued in Austria, but accepted and payable in England is dishonoured. The holder receives from

¹ *Re Joint Stock Discount Co.* (1870), 10 L. R. Eq. 11; *Re Jacobs* (1875), 10 L. R. Ch. 211, composition under Act of 1869.

² *Cf. O'Keefe v. Dunn* (1815), 6 Taunt. at 315; see *e.g.* Art. 191.

³ *Cf. Ellis v. McHenry* (1871), 6 L. R. C. P. at 234.

⁴ *Burrows v. Jemino* (1726), 2 Stra. 733.

⁵ *Potter v. Brown* (1804), 5 East, 124; *Cf. Symons v. May* (1851), 6 Exch. 707.

⁶ *Allen v. Kemble* (1848), 6 Moore P. C. 315; *Cf. Wilkinson v. Simson* (1838), 2 Moore P. C. 275; *Compensatio* is recognised as a discharge in all countries where civil law prevails. See further on that subject *Nouvièr*, §§ 1053—1060. French Code Civil, Arts. 1289—1299.

Discharge when laws conflict. the drawer in Austria a smaller sum in satisfaction of the bill. This, according to Austrian law, is a valid discharge. A subsequent indorser cannot sue the acceptor in England.¹

5. Bill drawn, accepted, and payable in England. The acceptor is made bankrupt and receives his discharge in Australia. He can be sued on the bill in England.²

Payment in due course.

Payment in due course a discharge. Art. 232. A bill is discharged by payment in due course,³ that is to say, by payment in accordance with Arts. 234 to 236.

NOTE.—*Satisfaction in general.*—No definition of payment is attempted, for “payment” is not a technical term.⁴ The holder of a bill is entitled to receive money (Cf. Arts. 10, 36), but when the time of payment comes he may, if he chooses, receive satisfaction in any other form. Any satisfaction which would operate as a discharge in the case of an ordinary contract to pay money is equally effectual in the case of a bill.⁵ Willes, J., seems to think this principle hardly wide enough having regard to the rule (Art. 239) that accord without satisfaction in some cases suffices.⁶ *Completion of Payment.*—Payment by a banker is complete, and the property in the money passes to the payee when the money is laid on the counter.⁷ *Proceeding for Costs.*—Where the holder of a bill sues concurrently two or more of the parties thereto and is paid by one of them he may still proceed against the others for costs incurred.⁸

¹ *Ralli v. Dennistoun* (1851), 6 Exch. 483, 36th plea and judgment at 493.

² *Bartley v. Hodges* (1861), 30 L. J. Q. B. 352.

³ *Morley v. Culverwell* (1840), 7 M. & W. at 182, Parke, B.

⁴ See per Maule, J., *Maillard v. Argyle* (1883), 6 M. & Gr. at 45.

⁵ See e.g. cases discussed on this basis. *Cripps v. Davis* (1843), 12 M. & W. 159, agreement to set-off another debt; *Sibree v. Tripp* (1846), 15 M. & W. 23, negotiable bill for less amount; *Ford v. Beech* (1848), 11 Q. B. 852, Ex. Ch., agreement to suspend; *Ansell v. Baker* (1850), 15 Q. B. 20, merger; *Belshaw v. Bush* (1851), 11 C. B. 207, bill of third party; *Woodward v. Pell* (1868), 4 L. R. Q. B. 55, debtor taken in execution; Cf. Art. 251.

⁶ Cf. *Cook v. Lister* (1863), 32 L. J. C. P. at 126; *Abrey v. Cruz* (1869), 5 L. R. C. P. at 44.

⁷ *Chambers v. Miller* (1862), 32 L. J. C. P. 30.

⁸ *Randall v. Moon* (1852), 21 L. J. C. P. 226, as explained by *Cook v. Lister* (1863), 32 L. J. C. P. at 127; *London and Sub. Bank v. Walkinshaw* (1872), 25 L. T. N. S. 704.

Art. 233. Part payment of a bill in due course ^{Part} operates as a discharge *pro tanto*.¹ _{payment.}

NOTE.—As to part payment by the drawer or an indorser, Cf. Art. 234, Expl. 2. Under German Exchange Law, Art. 38, the holder cannot refuse part payment, but this is clearly not English law. Cf. Arts. 39 and 158, and 206.

Art. 234. Payment in order to operate as a dis- ^{Payment,} charge of the bill must be made by or on behalf of _{by whom.} the drawee² or acceptor.³

ILLUSTRATIONS.

1. A bill is accepted by three joint acceptors (not partners). One of them pays it at maturity. The bill is discharged and cannot be again negotiated. It is immaterial that the acceptor who paid accepted the bill for the accommodation of the other two.⁴

2. A bill accepted payable at a bank and indorsed in blank by C. is sent to D. to collect. D. improperly discounts it. To regain possession, D. goes to the acceptor's bankers, pays in the amount of the bill, and asks to have the bill given up to him, when the holder has been paid. This is done. The bill is not discharged. C. can sue the acceptor.⁵

3. C. is the holder of a dishonoured bill indorsed in blank. D. pays the amount and costs to C. in order to get the bill and sue on it. C. parts with the bill under the impression that D. has paid it on behalf of the acceptor. The bill is not discharged. D. can sue the drawer.⁶

4. A joint and several note is paid at maturity by one of the makers. The note is discharged.⁷

Explanation 1.—Payment of an accommodation bill

¹ *Graves v. Key* (1832), 3 B. & Ad. 313; Cf. *Cook v. Lister* (1863), 32 L. J. C. P. at 125, Willes, J.; French Code, Art. 156; German Exchange Law, Arts. 38, 39.

² *Wilkinson v. Simson* (1838), 2 Moore P. C. at 287, Parke, B.

³ *Callow v. Lawrence* (1814), 3 M. & S. at 97, Ld. Ellenborough; *Jones v. Broadhurst* (1850), 9 C. B. at 181, Cresswell, J.

⁴ *Harmer v. Steele* (1849), 4 Exch. at 13—14, Ex. Ch.; Cf. *Bartrum v. Caddy* (1838), 9 A. & E. 275, note on demand paid by accommodation maker.

⁵ *Deacon v. Stodhart* (1841), 2 M. & Gr. 317; *Thomas v. Fenton*, (1847), 5 D. & L. 28, see at 38; Cf. *Walter v. James* (1871), 6 L. R. Ex. 124.

⁶ *Lyon v. Maxwell* (1868), 18 L. T. N. S. 28.

⁷ *Beaumont v. Greathead* (1846), 2 C. B. 494.

Payment, by the person accommodated is deemed to be a payment made on behalf of the acceptor, and operates as a discharge.¹

ILLUSTRATION.

A bill is accepted for the accommodation of the drawer. The drawer negotiates the bill, and then takes it up at maturity. Subsequently he re-issues it. The holder cannot sue the acceptor, for the bill is discharged.²

NOTE.—See Art. 90, defining “accommodation bill.” The discharge may be supported on the ground adopted by Willes, J., that the person accommodated pays as the acceptor’s agent, or on the ground that the bill has been paid by the principal debtor. Cf. Art. 245, as to principal and surety, and Art. 134, n., equities attaching to overdue bill.

Explanation 2.—Subject to Expl. 1, payment by the drawer or indorser of a bill, as such, is not a discharge of it,³ but is merely a purchase thereof.

ILLUSTRATIONS.

1. The acceptor of a bill, originally payable to drawer’s order, dishonours it. The drawer pays the holder and gets the bill. He may either sue the acceptor himself, or he may strike out his own and the subsequent indorsements and again negotiate the bill away.⁴

2. A bill drawn by A., payable to C. or order, and by C. indorsed to D., is dishonoured by the acceptor at maturity. The drawer pays D. and gets the bill. He may sue the acceptor, but he cannot re-issue the bill.⁵ *Aliter*, it seems, if C. or D. had indorsed in blank.⁶

¹ *Cook v. Lister* (1863), 32 L. J. C. P. at 127, Willes J., see also *Lazarus v. Cowie* (1842), 3 Q. B. 459, criticised but followed in *Jewell v. Parr* (1853), 13 C. B. 909, apparently approved *Parr v. Jewell* (1855), 16 C. B. 684 at 709, Parke, B., Ex. Ch.; *Jones v. Broadhurst* (1850), 9 C. B. at 181 and 189; *Ralli v. Denniatoun* (1851), 6 Exch. 483, 36th plea and judgment at 493; *Strong v. Foster* (1855), 17 C. B. at 222; *Re Oriental Bank* (1871), 7 L. R. Ch. at 102.

² *Lazarus v. Cowie*, *supra*; Cf. Art. 230, discharge defined.

³ *Jones v. Broadhurst* (1850), 9 C. B. 173; *Kemp v. Balls* (1854), 10 Exch. 607; *Woodward v. Pell* (1868), 4 L. R. Q. B. 55.

⁴ *Callow v. Laurance* (1814), 3 M. & S. 95; *Hubbard v. Jackson* (1827), 4 Bing. 390; Cf. Art. 119, n.: *Elsworth v. Brewer* (1831), 28 Massachus. R. 315.

⁵ Cf. *Williams v. James* (1850), 15 Q. B. at 505, Patteson, J.

⁶ See Art. 130; *sed contra* *Daniel*, § 1240; *Gardner v. Maynard* (1863), 89 Massachus. R. 456.

3. The C. bank discount a bill, which is accepted payable at their house, and then indorse it away. At maturity it is presented to the C. bank and paid. It is a question of fact whether they paid as the agents and bankers of the acceptor, or whether they took up the bill as indorsers. In the latter case it is not discharged, and they can sue the drawer, or if he be a customer, debit him with the amount of the bill.¹ Payment,
by whom.

4. The indorser of a bill writes to the drawer promising to "retire" it, and accordingly takes it up before maturity. The bill is not discharged.²

Explanation 3.—Subject to Expl. 1, when a bill is paid wholly or in part by the drawer or by an indorser, and the holder retains possession of the bill, he holds it as trustee for such drawer or indorser as regards the amount received.³

Exception.—When the acceptor of a bill becomes bankrupt, any payment made by the drawer or an indorser to the holder must be deducted from the amount for which the holder is entitled to prove against the acceptor's estate.⁴

NOTE.—The right of the holder to retain the bill when he has been paid by the drawer or an indorser depends on the arrangement between them.⁵ In France and other countries where the civil law is followed, payment by the drawer or an indorser discharges the bill, the rule being *debitorem ignarum seu etiam invitum solvendo liberare possumus*.

Art. 235. Payment in order to operate as a dis- Payment,
at what
time.

¹ *Pollard v. Ogden* (1853), 2 E. & B. 459.

² *Elam v. Denny* (1854), 15 C. B. 87; see at 94 as to the meaning of "retire," but see a different construction put on the term *Ex parte Reed* (1872), 14 L. R. Eq. at 593.

³ *Jones v. Broadhurst* (1850), 9 C. B. at 183; *Cook v. Lister* (1863), 32 J. L. C. P. at 127, Willes, J.; *Thornton v. Maynard* (1875), 10 L. R. C. P. 695; Cf. Art. 141, as to effect of this, if holder sues.

⁴ *Ex parte Taylor* (1857), 26 L. J. Bank. 58; *Ex parte Mazoudoff* (1868), 6 L. R. Eq. 582.

⁵ *Jones v. Broadhurst* (1850), 9 C. B. at 183; Cf. *Woodward v. Pell* (1868), 4 L. R. Q. B. 55, as to a lien for costs, and Art. 206.

Payment, at what time. charge of the bill must be made at or after the maturity thereof.¹

Explanation — Payment by the drawee or acceptor previous to maturity operates as a mere purchase of the bill, and subject to Art. 238 he may, if the form of the bill permit, re-issue and further negotiate it.²

ILLUSTRATIONS.

1. Accepted bill payable three months after date. A month before it matures the holder indorses it for value to the acceptor. The next day the acceptor indorses it to D. D. can sue all parties to the bill.³

2. An accepted bill payable three months after date is held by C. A month before it matures the acceptor pays C., but C. retains the bill. The next day C. indorses it to D., who takes it for value and without notice of the payment. D. can sue the acceptor.⁴

NOTE.—Premature payment or any other premature discharge is of course valid *inter partes*.

Payment, to whom. Art. 236. Payment in order to operate as a discharge of the bill must be made to the holder or to some person authorized to receive payment on his behalf.⁵

Exception 1.—Payment to the *de facto* holder who holds a bill wrongfully operates as a discharge if it be made in good faith and without notice.⁶

ILLUSTRATIONS.

1. A bill is payable to "John Smith or order." Another

¹ *Burbridge v. Mannors* (1812), 3 Camp. at 194; *Beaumont v. Greathead* (1846), 2 C. B. 494 (after maturity). French Code, Arts. 144—146.

² *Morley v. Culverwell* (1840), 7 M. & W. 174; see at 182, Parke, B.; *Attenborough v. Mackenzie* (1856), 25 L. J. Ex. 244; Cf. Art. 130.

³ *Id.*; Cf. Art. 130.

⁴ Cf. *Dod v. Edwards* (1827), 2 C. & P. 602, premature release; French Code, Art. 144; *Cripps v. Davis* (1843), 12 M. & W. 159; *Ingham v. Primrose* (1859), 7 C. B. N. S. 82.

⁵ Cf. *Lefley v. Mills* (1791), 4 T. R. at 175; *Walker v. Macdonald* (1848), 2 Exch. at 532; *Nouguier*, § 889; *Pothier*, No. 164—167.

⁶ Cf. *Roberts v. Tucker* (1851), 16 Q. B. at 579, Ex. Ch.; Art. 101; and see *Jones v. Fort* (1829), 9 B. & C. at 768; *Gray v. Johnston* (1868), 3 L. R. H. L. at 14; *Pothier*, No. 168—169.

person of the same name gets the bill and presents it. The acceptor pays him. The bill is not discharged. The acceptor is still liable to the real John Smith. Art. 81.

2. A bill indorsed in blank is stolen. The thief presents it to the acceptor at maturity and obtains payment. If the acceptor pays *bonâ fide* he is discharged.¹

NOTE.—See Arts. 125—128, determining who is the *de facto* holder, Art. 144, as to lost bills, and Art. 29 as to bills drawn in a set. Arts. 141—143 show that the acceptor must pay unless the holder is shewn to hold the bill wrongfully. Art. 94 shows that the payor may set up the *jus tertii* and decline to pay a wrongful holder. But there is no decision to shew when he must set up the *jus tertii*. It is conceived that the same test of *bona fides* would be applied to the payor that is applied to an indorsee. See Art. 86, n. Payor and indorsee alike part with value and get the bill. *Holder's identity*. Under some continental codes when a bill is payable specially and the holder is a stranger he is bound to give some proof of identity. In England it is conceived that possession is *prima facie* evidence of identity,² and that if the payor doubts the identity of the person presenting or the genuineness of the instrument he must pay or refuse to pay at his own risk. There is a dictum by Maule, J.,³ that in such case the payor would be allowed a reasonable time to make inquiry, but having regard to the duties of the holder this seems very questionable.

Exception 2.—Banker paying as drawee a genuine cheque which is held under a forged indorsement. Art. 263.

NOTE.—German Exchange Law, Art. 36, extends this protection to all payors, and Indian Draft Code, Arts. 86—88, proposes to do the same. French Code, Art. 145, provides that payment at maturity made “without opposition” discharges the payor.

Art. 237. When payment of a bill is made by mistake to a person who is not entitled to receive payment, and who cannot give a discharge,⁴ the money so paid may be recovered back by the payor as follows :—

Recovery
by payor
of money
paid by
mistake.

¹ *Smith v. Sheppard* (1776), cited *Chitty*, 10th ed., p. 180, n. ; Cf. *Roberts v. Tucker* (1851), 16 Q. B. at 576, Parke, B.

² *Nouguier*, § 897.

³ Cf. *Bulkeley v. Butler* (1824), 2 B. & C. at 441, Bayley, J.

⁴ *Roberts v. Tucker* (1851), 16 Q. B. at 578.

⁵ Art. 236, as to who can give discharge.

Recovery
by payor
of money
paid by
mistake.

- (1.) The payor of a forged, altered, or cancelled bill, who has been led to pay it by the negligence of his correspondent or customer, and has not himself been guilty of negligence, can recover the money so paid from such correspondent or customer.

ILLUSTRATIONS.

1. A. draws a cheque on his bankers for 50*l.*, carelessly leaving a blank space before the words and figures "fifty." The holder fills it up as a cheque for 150*l.*, and obtains payment. The banker can charge A. with the amount so paid.¹

2. A. draws in the ordinary way a cheque for 50*l.* It is altered to 150*l.* The alteration is not apparent. A.'s banker pays it. He can only charge A. with 50*l.*²

3. A. draws a bill on B., and indorses it in blank. Subsequently, intending to cancel it, he tears it into four pieces, and throws the pieces away. C. picks up the pieces, pastes them together, and presents the bill to B. and obtains payment. If the marks of cancellation are apparent, B. cannot recover the money so paid from A.³ *Aliter* if the marks be not apparent.⁴

4. A bill held under a forged indorsement is presented to B. for acceptance. B. accepts it payable at his bankers. The bankers pay it. They cannot charge B. with the amount.⁵

- (2.) A banker who, as drawee, pays a genuine cheque held under a forged or unauthorized indorsement, can recover the money so paid from the drawer.⁶ Cf. Art. 263.

- (3.) The payor can recover the money paid from the person who received it when such person did

¹ *Young v. Grote* (1827), 4 Bing. 253, as explained by *Arnold v. Cheque Bank* (1876), 1 L. R. C. P. D. at 586; *Halifax Union v. Wheelwright* (1875), 10 L. R. Ex. 183; Cf. Arts. 23, 52.

² *Hall v. Fuller* (1826), 5 B. & C. 750.

³ *Scholey v. Ramsbottom* (1810), 2 Camp. 485; Cf. Art. 138.

⁴ Cf. *Ingham v. Primrose* (1859), 7 C. B. N. S. 82.

⁵ *Roberts v. Tucker* (1851), 16 Q. B. 560, Ex. Ch.

⁶ 16 & 17 Vict. c. 59, § 19.

not act *bond fide* in demanding payment of the bill.¹

Recovery
by payor
of money
paid by
mistake.

- (4.) The payor can recover the money paid from the person who received it when such person acted *bond fide* in demanding payment of the bill, provided (a) that the payor was not guilty of negligence in making the payment, and (probably) (b) that the position of the party receiving payment has not altered before the discovery of the mistake and notification thereof.

ILLUSTRATIONS.

1. A cheque is presented and paid. Directly after the payment the bankers discover that the drawer's account was overdrawn. They cannot recover the money so paid from the holder of the cheque.²

2. A bill purporting to be drawn by A. on B., is paid by B. Subsequently B. discovers that A.'s signature was a forgery. B. cannot recover the money from the holder to whom he paid it.³

3. C., the holder of a bill purporting to be accepted payable at a bank, indorses it to D. for collection. D. obtains payment, and hands the money over to C. A week after the payment the bank discovers that the acceptance was a forgery. They cannot recover the money from C.⁴

4. A bill, purporting to bear the indorsement of C., is held by F. It is dishonoured. X. pays it *suprà protest* for C.'s honour. The same day he discovers that C.'s indorsement was a forgery, and gives notice to F. X. can (perhaps) recover the money from F.⁵

5. C., the indorser of a bill, pays D., the holder, in ignorance that he has been discharged by D.'s omission to present it for payment.

¹ *Martin v. Morjan* (1819), 3 Moore 635; Cf. *Arta*. 81 and 94; *Kendal v. Wood* (1871), 6 L. R. Ex. 243.

² Cf. *Chambers v. Miller* (1862), 32 L. J. C. P. 30.

³ *Price v. Neal* (1762), 3 Burr. 1355; Cf. *Art*. 212.

⁴ *Smith v. Mercer* (1815), 6 Taunt. 76.

⁵ *Wilkinson v. Johnston* (1824), 3 B. & C. 428; but cf. *Phillips v. Im Thurn* (1866), 1 L. R. C. P. 463.

Recovery by payor of money paid by mistake. A week after he discovers this fact. C. can recover the money he paid from D.¹

6. C. is the holder of a bill purporting to be accepted by B., payable at his bankers. The bank pay the bill. Next day they discover that the acceptance was a forgery, and give notice to C. They cannot recover the money from C.²

7. A bill held by C., and purporting to be accepted by B., is presented to B. for payment. B. inspects and pays it. Subsequently he discovers that his signature was forged. He cannot recover the money from C.³

8. A genuine bill fraudulently altered in amount from 10*l.* to 100*l.* is subsequently accepted and paid. Four months afterwards the acceptor discovers the fraud and gives immediate notice to the holder he paid. He can (probably) recover the money.⁴

NOTE.—The reasons given for the decisions are very conflicting. Illustrations 2, 3, and 6, might well be supported on the ground that the payor is bound to recognize the signature of his own correspondent or customer (Cf. Art. 212), this being matter peculiarly within his own knowledge; but apart from this, it seems on principle that a person presenting a bill for payment ought to warrant its genuineness and his right to receive payment, just as a transferor by delivery warrants genuineness and his right to transfer (Art. 226). There are dicta to this effect,⁵ but the point must be regarded as very questionable: Cf. Art. 236, n.

Coincidence of Right and Liability.

Acceptor the holder at maturity. Art. 238. A bill which has been negotiated is discharged, when the acceptor either is or becomes the holder thereof at or after maturity. Cf. Art. 235.

¹ *Milnes v. Duncan* (1827), 6 B. & C. 671; Cf. *Kelly v. Solari* (1841), 9 M. & W. at 59.

² *Cocks v. Masterman* (1829), 9 B. & C. 902.

³ *Mather v. Maidstone* (1856), 18 C. B. 273 at 295.

⁴ *White v. Cent. Nat. Bank* (1876), 64 New York R. 316; Cf. *Burchfield v. Moore* (1854), 23 L. J. Q. B. 261, and Arts. 248—249.

⁵ Cf. *Wilkinson v. Johnston* (1824), 3 B. & C. at 437; *Woods v. Thiedeman* (1862), 1 H. & C. at 495, Bramwell, B.; *sed contra East India Co. v. Tritton* (1824), 3 B. & C. at 291.

Exception.—Acceptor holding a bill as administrator of the late holder.¹

Acceptor
the holder
at
maturity.

ILLUSTRATIONS.

1. A bill payable after date and accepted by three joint acceptors is held by C. C., before the bill matures, indorses it to B., one of the acceptors. If B. retains the bill till its maturity, it is discharged.²

2. B. is the maker of a note payable on demand. The holder dies, having appointed B. his executor. The note is discharged.³

3. B. is the maker of a note payable on demand. B. dies having appointed C., the holder, his executor. The note is not discharged unless C. have assets available for the payment of it, and he can validly indorse it away at any time before he has such assets.⁴

4. B., X., and Y. make a joint and several note payable on demand to B.'s wife, in consideration of money lent by her as administratrix to B. X. and Y. sign as sureties for B. On B.'s death, his widow can sue X. and Y.⁵

NOTE.—As to “discharge” see Art. 230. The general rule is that a present right and liability united in the same person, cancel each other. This mode of discharge is called in the civil law *confusio*, and is recognised in all countries whose law is founded on civil law.⁶

Waiver or Cancellation.

Art. 239. A bill is discharged when the holder of it at or after maturity absolutely and unconditionally renounces his rights against the acceptor.

Waiver or
cancellation
by
holder.

The liabilities of any party to a bill may in like

¹ *Williams on Executors*, 7th ed., p. 1313.

² *Harmer v. Steele* (1849), 4 Exch. 1 Ex. Ch.; Cf. *Mainwaring v. Newman* (1800), 2 B. & P. 120 (two firms with common partner); *Neale v. Turton* (1827), 4 Bing. 149.

³ *Freakley v. Fox* (1829), 9 B. & C. 130, but the executors must account for the amount of the note as assets; *Williams on Executors*, 7th ed., pp. 1310—1315.

⁴ *Lowe v. Peskett* (1855), 16 C. B. 500.

⁵ *Richards v. Richards* (1831), 2 B. & Ad. 447; Cf. *Beecham v. Smith* (1858), E. B. & E. 442.

⁶ As to France, see *Nouguier*, §§ 1061—1065. Qu. if German Exchange Law, Art. 10, is a departure from the rule.

Waiver or
cancellation
by
holder.

manner be released by the holder verbally and without consideration either before or after its maturity;¹ but such release if given before maturity is inoperative against a subsequent holder for value who takes the bill before maturity and without notice.²

ILLUSTRATIONS.

1. The holder of a bill at maturity tells the acceptor that he renounces all claims against him. The bill is discharged.³

2. The holder of a bill before it matures tells the first indorser that he renounces all claim against him. The first and subsequent indorsers are (probably) discharged as regards such holder. The drawer and acceptor are not.⁴

3. The holder of a bill verbally agrees with the drawer that he will not exercise his right of recourse against him if a certain event takes place. The event happens. The drawer is not discharged, for this is merely an oral agreement to vary the effect of a bill, and not an absolute waiver of the drawer's liability.⁵

4. The holder of a bill strikes out the acceptor's signature, intending to cancel it. This is a waiver of the acceptance, and discharges the bill.⁶ *Aliter* if the cancellation be not apparent, and the bill be negotiated to a holder for value before maturity.⁷

5. B. accepts the first part of a foreign bill drawn in a set of two, and sends it, as directed, to a bank to be held at the disposition of the holder of the second. The drawer, who is the holder of the second part, failing to discount it, cancels it, and directs the bank to deliver up the first to B. B. gets the first part and cancels his acceptance. B. is discharged, and if the drawer subsequently issue a fresh second part, the holder cannot sue B.⁸

¹ *Foster v. Dawber* (1851), 6 Exch. 839 at 851, 852, Parke, B.; Cf. *Cook v. Lister* (1863), 32 L. J. C. P. at 126; *Abrey v. Cruz* (1869), 5 L. R. C. P. at 44, Willes, J.; *Pothier*, No. 175—183.

² Cf. *Ingham v. Primrose* (1859), 7 C. B. N. S. 82, and Art. 235.

³ *Whalley v. Tricker* (1807), 1 Camp. 35, and *Foster v. Dawber*, *suprà*.

⁴ *Pothier*, No. 182, 183; *Nouguier*, §§ 1048—1049; Cf. *Delatorre v. Barclay* (1814), 1 Stark. 7.

⁵ *Abrey v. Cruz* (1869), 5 L. R. C. P. 37.

⁶ Cf. *Sweeting v. Halse* (1829), 9 B. & C. at 369; *Yglesias v. River Plate Bank* (1877), 3 L. R. C. P. D. 60.

⁷ *Ingham v. Primrose* (1859), 7 C. B. N. S. 82, and Art. 138.

⁸ *Ralli v. Dennistoun* (1851), 6 Exch. 483.

NOTE.—This mode of discharge, called in France “Remise volontaire,” is recognised in all countries where the civil law is followed. Compare Art. 168, clause 4, and Art. 200, clause 7, as to waiver of the holder's duties, and Art. 119, n., as to striking out indorsements. Waiver or cancellation by holder.

Art. 240. The cancellation of a signature is *prima facie* evidence that the liabilities of the party whose signature is cancelled have been discharged, but the cancellation may be shewn to have been made by mistake, and is then inoperative.¹ Cancellation by mistake.

Payment for Honour Suprà Protest.

Art. 241. A bill which has been protested or noted for non-payment may be paid *suprà protest* for the honour of any party liable thereon.² It then ceases to be negotiable.³ Payment *suprà protest*.

Payment *suprà protest* must be duly attested by a notarial act of honour.⁴

NOTE.—Promissory notes are sometimes, though not often, paid *suprà protest*. The “act of honour,” is founded on a declaration by the payor or his agent stating for whose honour he desires to pay. Payment *suprà protest* is known in France as payment “par intervention,” which expresses its nature.

Art. 242. A bill may be paid *suprà protest* by the acceptor *suprà protest*, or referee in case of need,⁵ or Who may pay *suprà protest*.

¹ *Raper v. Birkbeck* (1812), 15 East, 17, acceptance cancelled by referee in case of need. *Wilkinson v. Johnson* (1824), 3 B. & C. 428, indorsements cancelled by payor for honour. *Norelli v. Rossi* (1831), 2 B. & Ad. 757; acceptance cancelled by bank where payable, *Warwick v. Rogers* (1842), 5 M. & Gr. 340 at 373; acceptance cancelled by bank where payable, *Prince v. Oriental Bank* (1878), 3 L. R. Ap. Ca. 325, P. C., note cancelled by maker's banker.

² *Geralopulo v. Wieler* (1851), 20 L. J. C. P. 105; Cf. *Ex parte Wyld* (1860), 2 De G. F. & J. 642; *Brook's Notary*, 4 ed., 108—110.

³ *Ex parte Swan* (1868), 6 L. R. Eq. 344; *Nouguier*, § 1026; Cf. *Deacon v. Stodhart* (1841), 2 M. & Gr. at 320.

⁴ Cf. *Ex parte Wyld* (1860), 2 De G. F. & J. 642; *Brook's Notary*, 4 ed., 108—110; for forms, see pp. 226—228.

⁵ Cf. 6 & 7 Will. 4, c. 58; German Exchange Law, Art. 62.

Who may pay bill *suprà protest*. (perhaps) by any other person, whether a party liable on the bill or not.¹

NOTE.—By French Code, Art. 159, payment *suprà protest* may be made by “tout intervenant,” but this is interpreted to mean any person other than a party already liable on the bill.² The limitation seems reasonable, having regard to the rights acquired by the payor. It is clear the acceptor *suprà protest* can only pay for the honour of the party for whose honour he accepted. French Code, Art. 159, and German Exchange Law, Art. 64, provide that if two or more persons offer to pay *suprà protest*, he whose payment will liberate most parties must be preferred.

Holder's obligation to receive payment for honour. Art. 243. A holder who refuses to receive payment *suprà protest* (perhaps) loses his right of recourse against the parties who would have been discharged thereby.³

NOTE.—An object for refusing might be the prospect of gain on the re-exchange.

Rights and duties of payor for honour. Art. 244. The payor *suprà protest* on payment of the amount of the bill and expenses, is entitled to receive from the holder the bill itself and the protest.⁴

The payor *suprà protest* by such payment is invested with both the rights and the duties of the holder as regards the party for whose honour he pays, and all prior parties liable on the bill to such party; but all parties subsequent to him for whose honour payment is made are discharged.⁵

ILLUSTRATION.

A dishonoured bill is held by the fifth indorsee. If X. pays it *suprà protest* for the honour of the acceptor, he acquires a right to re-imbursement against the acceptor alone; if he pays for the

¹ Byles, p. 270. No decision in England.

² Nouguier, §§ 1004—1008.

³ Nouguier, § 1009; German Exchange Law, Art. 62. No English decision.

⁴ German Exchange Law, Art. 63; Cf. Art. 206. No English decision, but such is the practice.

⁵ *Goodall v. Polhill* (1845), 14 L. J. C. P. 146, duties, e.g. notice of dishonour; *Ex parte Swan* (1868), 6 L. R. Eq. 344, rights; Cf. *Ex parte Wyld* (1860), 2 De G. F. & J. 642; French Code, Art. 159; German Exchange Law, Art. 63.

honour of the first indorser, he can sue the first indorser and the drawer (provided they have due notice) and the acceptor, but the second and subsequent indorsers are discharged. Rights and duties of payor for honour.

NOTE.—*Pothier*, Nos. 113, 114, points out that the right of the payor is not, properly speaking, a right of action on the bill, but a right arising out of the quasi contract *negotiorum gestorum*, hence the payor cannot again negotiate the bill, or transfer his rights.

Discharge of Surety by dealings with Principal.

Art. 245. Where the relationship of principal and surety exists between the parties to a bill, or the parties to a bill transaction, and the holder, having notice thereof, engages to give time to or voluntarily discharges the principal, the surety or sureties are thereby discharged.¹ Discharge of surety by certain dealings with principal.

Explanation.—*Prima facie* the acceptor of a bill is the principal debtor, and the drawer and indorsers are as regards him, sureties, and the drawer of a bill is the principal as regards the indorsers, and the first indorser is the principal as regards the second and subsequent indorsers, and so on in order;² but evidence for the present purpose is admissible to show the real relationship of the parties, and it is immaterial that the holder was ignorant of the relationship when he took the bill, provided he had notice thereof at the time of his dealings with the principal.³

ILLUSTRATIONS.

1. The holder of a bill takes from the acceptor in lieu of pay-

¹ *Oriental Corp. v. Overend* (1871), 7 L. R. Ch. 142, affirmed (1874), 7 L. R. H. L. 348.

² Cf. *Cook v. Lister* (1863), 32 L. J. C. P. at 127, per Willes, J.

³ *Ewin v. Lancaster* (1865), 6 B. & S. at 577; *Oriental Corp. v. Overend* (1871), 7 L. R. Ch. 142; affirmed (1874), 7 L. R. H. L. 348.

Discharge of surety by certain dealings with principal.

ment a new bill payable at a future day, to which the drawer and indorsers are not parties. This discharges the drawer and indorsers.¹

2. The holder of a bill for 200*l.* takes from the acceptor 100*l.* in full discharge of his claim, but expressly reserves his rights against the drawer and indorsers (thereby preserving their rights against the acceptor). The drawer and indorsers are not discharged.²

3. The holder of a bill for 100*l.* accepts a composition of 10*s.* in the pound from the acceptor under Bankruptcy Act, 1869, §§ 125, 126. The drawer and indorsers are only discharged to the extent of the sum received by the holder, for the acceptor is discharged by operation of law.³

4. The holder of a dishonoured bill enters into a binding agreement to give time to the first indorser. This discharges the subsequent indorsers, but not the drawer or acceptor.⁴

5. C. is the holder of a joint and several note made by B. and X. X. signed merely to accommodate B., and as surety for him. C., knowing this, agrees for consideration to give time to B. X. is thereby discharged.⁵

6. C. is the holder of a joint and several note made by B. and X. C. knows that X. signed as surety to accommodate B. B. pays C. It turns out afterwards that this payment was a fraudulent preference. C. refunds the money to B.'s trustees. X. is not discharged by B.'s payment.⁶

7. A bill is accepted for the accommodation of the drawer. After it is due the holder is informed of this and then agrees to give time to the drawer. The acceptor is discharged.⁷

8. A bill drawn by A. and accepted by B. is discounted with C. C. subsequently discovers that the bill was drawn and accepted for the accommodation of X., who is not a party to the bill, but who is

¹ Cf. *Gould v. Robson* (1807), 8 East, 576, and *Petty v. Cooke* (1871), 6 L. R. Q. B. at 794.

² *Muir v. Crawford* (1875), 2 L. R. Sc. Ap. 456, H. L.

³ *Re Jacobs* (1875), 10 L. R. Ch. 211; Cf. *Yglesias v. River Plate Bank* (1877), 3 L. R. C. P. D. 60.

⁴ *Claridge v. Dalton* (1815), 4 M. & S. at 232; *Hall v. Cole* (1836), 4 A. & E. 577.

⁵ *Greenough v. McClelland* (1860), 30 L. J. Q. B. 15 Ex. Ch.

⁶ *Petty v. Cooke* (1871), 6 L. R. Q. B. 790.

⁷ *Ewin v. Lancaster* (1865), 6 B. & S. 571; Cf. *Torrance v. Bank of British America* (1873), 5 L. R. P. C. at 252.

to provide for it. C. then enters into an agreement to give time to
 X. This discharges the acceptor of the bill.¹

NOTE.—As regards the particular dealings with a principal which discharge the surety there is no difference between an ordinary surety and a surety on a bill, so it would be useless to multiply illustrations.

Discharge
of surety
by certain
dealings
with principal.

Alterations.

Art. 246. "Issue" means the first delivery of a bill to a person who takes it as a holder for value and thereby acquires the right to enforce payment thereof.²

Issue
defined.

ILLUSTRATIONS.

1. A. draws a bill on B., payable to his own order. B. accepts the bill for value and returns it to A. The bill is issued.³

2. A. draws, B. accepts, and C. indorses a bill payable to D. or order for D.'s accommodation. The bill while in D.'s hands is not issued, but if D. indorses and discounts it with E. it is issued.⁴

Art. 247. An alteration is material which in any way alters the operation of a bill and the liabilities of the parties as originally fixed thereby, whether the change be prejudicial or not.⁵

Material
alteration
defined

ILLUSTRATIONS.

1. The following are material :—

A particular consideration is substituted for the words value received ;⁶ or the date of a bill payable at a fixed period after date is altered, and the time of payment thereby postponed⁷ or acce-

¹ *Oriental Corp. v. Overend* (1871), 7 L. R. Ch. 142 ; affirmed (1874), 7 L. R. H. L. 348.

² Cf. *Ex parte Bignold* (1836), 1 Deac. at 735.

³ *Cardwell v. Martin* (1808), 9 East, 190 ; *Bathe v. Taylor* (1812), 15 East, 412 ; Cf. *Kennerly v. Nash* (1816), 1 Stark. 452.

⁴ *Downes v. Richardson* (1822), 5 B. & Ald. 674 ; Cf. *Tarleton v. Shingler* (1849), 7 C. B. 812.

⁵ *Gardner v. Walsh* (1855), 5 E. & B. 83 at 89. Cf. *Vance v. Lowther* (1876), 1 L. R. Ex. D. 176 materiality is a question of law.

⁶ *Knill v. Williams* (1809), 10 East, 431, stamp ; Cf. *Wright v. Inshaw* (1842), 1 D. N. S. 802.

⁷ *Outhwaite v. Luntly* (1815), 4 Camp. 179 ; *Hirschman v. Budd* (1873), 8 L. R. Ex. 171.

Material
alteration
defined.

lated;¹ or a bill payable three months after date is converted into a bill payable three months after sight;² or the sum payable is altered, *e.g.* from £105 to £100;³ or the specified rate of interest is altered, *e.g.* from 3 per cent. to 2½ per cent.;⁴ or a bill payable "with lawful interest" is altered by adding the words "interest at six per cent.;"⁵ or a particular rate of exchange is indorsed on a bill which does not authorise this to be done;⁶ or a joint note is converted into a joint and several note;⁷ or a new maker is added to a joint and several note;⁸ or the name of a maker of a joint and several note is cut off,⁹ or intentionally erased;¹⁰ or the place of payment is altered, *e.g.* a bill is accepted payable at X. & Co.'s, and Y. & Co. is substituted for X. & Co.;¹¹ or a place of payment is added *without* the acceptor's consent.¹²

2. The following are immaterial:—

A bill payable to C. or bearer is converted into a bill payable to C. or order;¹³ or an indorsement in blank is converted into a special indorsement;¹⁴ or the words "on demand" are added to a note in which no time of payment is expressed;¹⁵ or a bill addressed to B. and X. under the style of "B. X. and Co." is accepted by them as "B. and X.," and the address is afterwards altered to "B. and X." to make it correspond with the acceptance;¹⁶ or an erroneous "due date" is added to a bill.¹⁷

¹ *Master v. Miller* (1793), 2 H. Bl. 130, Ex. Ch.; *Walton v. Hastings* (1815), 4 Camp. 223, stamp.

² *Long v. Moore* (1799), 3 Esp. 155, n.

³ *Cf. Hamelin v. Bruck* (1846), 9 Q. B. 306.

⁴ *Sutton v. Toomer* (1827), 7 B. & C. 416.

⁵ *Warrington v. Early* (1853), 23 L. J. Q. B. 47.

⁶ *Hirschfield v. Smith* (1866), 1 L. R. C. P. 340. Cf. Art. 13.

⁷ *Perring v. Hone* (1826), 4 Bing. 28.

⁸ *Gardner v. Walsh* (1855), 5 E. & B. 83; *Cf. Clerk v. Blackstock* (1816), Holt. N. P. 474.

⁹ *Cf. Mason v. Bradley* (1843), 11 M. & W. 590; *Benedict v. Cowden* (1872), 49 New York, R. 396, cutting off condition written at bottom of note.

¹⁰ *Nicholson v. Revill* (1836), 4 A. & E. 675.

¹¹ *Tidmarsh v. Grover* (1813), 1 M. & S. 735.

¹² *Calvert v. Baker* (1838), 4 M. & W. 417; *Burchfield v. Moore* (1854), 23 L. J. Q. B. 261; *Cf. Hanbury v. Lovett* (1868), 18 L. T. N. S. 866. *Qu.* if the acceptor consent, *Walter v. Cubley* (1833), 2 Cr. & M. 151, and *cf. Mason v. Bradley* (1843), 11 M. & W. at 594; but see *Gibbs v. Mather* (1832), 2 Cr. & J. at 262; *Saul v. Jones* (1853), 23 L. J. Q. B. 37, which show that the position of the drawer and indorsers is altered.

¹³ *Attwood v. Griffin* (1826), 2 C. & P. 363.

¹⁴ See Art. 118.

¹⁵ *Aldous v. Cornwall* (1868), 3 L. R. Q. B. 573. Cf. Art. 18.

¹⁶ *Farquhar v. Southey* (1826), M. & M. 14. Cf. Art. 37.

¹⁷ *Fanshawe v. Peat* (1857), 26 L. J. Ex. 314.

Art. 248. A material alteration, by whomsoever made¹ avoids and discharges a bill.² Effect of alteration on bill.

ILLUSTRATION.

A bill held by C. is materially altered, *e.g.* by inserting a place of payment without the acceptor's consent. C. afterwards indorses the bill to D., who takes it for value and without notice of the alteration. D. in like manner indorses it to E. E. can maintain no action on this bill. His only remedy is to sue D. in respect of the consideration he gave for the bill, and D. will have a like remedy against C.³

Exception 1.—A bill altered before issue⁴ is valid as regards all parties who assent to such alteration.⁵

Exception 2.—A bill issued out of the United Kingdom, which has been altered after issue, is valid as regards all parties who assent to such alteration, provided the alteration were made before any negotiation of the bill within the United Kingdom.⁶

Exception 3.—A bill may at any time be altered for the purpose of correcting a mistake,⁷ and bringing the instrument into accordance with the intention of the parties at the time of issue.⁸

ILLUSTRATION.

A bill payable after date is wrongly dated,⁹ or a note intended to be negotiable is made payable to C. simply, the words "or order"

¹ *Davidson v. Cooper* (1843), 11 M. & W. at 799, affirmed (1844) 13 M. & W. 343.

² *Master v. Miller* (1793), 2 H. Bl. 130, Ex. Ch., 1 Smith L. C., 7th ed. 871, and notes.

³ *Burchfield v. Moore* (1854), 23 L. J. Q. B. 261.

⁴ Cf. Art. 248, issue defined.

⁵ *Webber v. Maddocks* (1811), 3 Camp. 1; *Kennerly v. Nash* (1816), 1 Stark. 452; *Downes v. Richardson* (1822), 5 B. & Ald. 674; *Sherrington v. Jermyn* (1828), 3 C. & P. 374; *Wright v. Inshaw* (1842), 1 D. N. S. 802, and Art. 246.

⁶ *Hamelin v. Bruck* (1846), 9 Q. B. 306, read with Stamp Act 1870, 33 & 34 Vict. c. 97, § 51; Cf. *Langton v. Lazarus* (1839), 5 M. & W. 629.

⁷ Cf. *Knill v. Williams* (1809), 10 East, 431; *Ex parte White* (1833), 2 Deac. & Ch. at 358, 359; *Hamelin v. Bruck* (1846), 9 Q. B. at 310; *London & Prov. Bank v. Roberts* (1874), 22 W. R. 402.

⁸ *Bradley v. Bardley* (1845), 14 M. & W. 873.

⁹ *Brutt v. Picard* (1824), R. & M. 37.

Effect of
alteration
on bill.

being omitted.¹ The mistake may be corrected after the bill has been negotiated.

NOTE.—The court in the exercise of its equitable jurisdiction has power to rectify a bill which does not express the intention of the parties,² just as it can do so in the case of any other contract. As regards parties who do not assent to an alteration the bill is avoided by virtue of the common law rule, for a bill in this respect is on the same footing as any other written contract. As regards parties who assent to the alteration the bill is, subject to certain exceptions above stated, avoided by virtue of the stamp laws. The alteration creates a new bill which requires a new stamp. In cases where an adhesive stamp may be used, the bill as altered may of course be re-stamped. This is in effect a new bill on the old paper. In America the severity of the English rule is relaxed, and it is generally held that an alteration by a stranger, or as it is called an “act of spoliation,” does not avoid a bill.³

Effect of
alteration
on con-
sideration.

Art. 249. The holder of a bill which has been avoided by a material alteration cannot sue on the consideration in respect of which it was negotiated to him.⁴

Exception 1.—If the bill was negotiated to him after the alteration was made, and he was not privy to the alteration, he may sue on the consideration.⁵

• *Exception 2.*—If the bill was altered while in his custody or under his control, he can still recover provided (a) that he did not intend to commit a fraud by the alteration,⁶ and (b) that the party sued would not have had any remedy over on the bill, if it had not been altered.

ILLUSTRATIONS.

1. A. sells goods to B., and draws a bill on him for the price

¹ *Kershaw v. Cox* (1800), 3 Esp. 246; *Byrom v. Thompson* (1839), 11 A. & E. 31; *Carriss v. Tattersall* (1841), 2 M. & Gr. 890; Cf. Art. 107.

² *Druiff v. Parker* (1868), 5 L. R. Eq. 131.

³ *Parsons, v. ii.*, p. 574; Cf. *U. S. v. Spalding* (1822), 2 Mason at 482, Story, J.; *Hunt v. Gray* (1871), 10 Amer. R. 232; *Dinsmore v. Duncan* (1874), 57 New York R. at 581.

⁴ *Alderson v. Langdale* (1832), 3 B. & Ad. 660; Cf. Art. 146.

⁵ *Burchfield v. Moore* (1854), 23 L. J. Q. B. 261; Cf. *Cundy v. Marriott* (1831), 1 B. & Ad. 696.

⁶ *Parsons, v. ii.* p. 572; *Hunt v. Gray* (1871), 10 Amer. R. 232.

payable to his own order. B. accepts. The bill is subsequently altered while in A.'s possession. A. can sue B. for the price of the goods though no action could be brought on the bill.¹ Effect of alteration on consideration.

2. A. sells goods to C., and draws a bill on B. for the price and indorses the bill to C. B. accepts. The bill is altered while in C.'s hands. C. cannot sue A. for the price of the goods, for the alteration has deprived A. of his remedy on the bill against B.²

Art. 250. Where a bill appears to have been altered, or there are marks of erasure on it, the party seeking to enforce the instrument is bound to give evidence to shew that it is not avoided thereby.³ Cf. Art. 138. Onus probandi as to alteration.

Renewal.

Art. 251. When a bill is given in renewal of a former bill, and the holder retains such former bill, the renewal, in the absence of special agreement,⁴ operates merely as a conditional payment thereof. If the renewed bill be paid in due course or otherwise discharged, the original bill is likewise discharged;⁵ but if the renewed bill be dishonoured, then subject to Art. 245, the liabilities of the parties to the original bill revive and they may be sued thereon.⁶ Effect of renewal.

¹ *Atkinson v. Hawdon* (1835), 2 A. & E. 628; Cf. *Sutton v. Toomer* (1827), 7 B. & C. 416, payee against maker of note.

² *Alderson v. Langdale* (1832), 3 B. & Ad. 660; see by way of analogy the effect at common law of the loss of a bill, *Crowe v. Clay* (1854), 9 Exch. 604.

³ *Knight v. Clements* (1838), 8 A. & E. 215; *Clifford v. Parker* (1841), 2 M. & Gr. 909; Cf. *Tatum v. Catomore* (1851), 16 Q. B. at 746; see e.g., *Cariss v. Tattersall* (1841), 2 M. & Gr. 890, as to what evidence suffices.

⁴ Cf. *Lewis v. Lyster* (1835), 2 C. M. & R. 704; *Lumley v. Musgrave* (1837), 4 Bing. N. C. at 15.

⁵ *Dillon v. Rimmer* (1822), 1 Bing. 100; Cf. *Soward v. Palmer* (1818), 2 Moore 274; *Lumley v. Hudson* (1837), 4 Bing. N. C. 15.

⁶ *Ex parte Barclay* (1802), 7 Ves. jr. 597; *Norris v. Aylett* (1809), 2 Camp. 329; Cf. *Kendrick v. Lomax* (1832), 2 Cr. & J. 405; *Sloman v. Cox* (1834), 1 C. M. & R. at 472.

Effect of
renewal.

NOTE.—When there is an agreement to renew, the application for renewal must be made within a reasonable time of the maturity of the original bill, but it need not be made before its maturity.¹ When the holder of a renewed bill could not have maintained an action on the original bill because there was no consideration for it,² or the consideration was illegal,³ or because he was privy to some fraud connected therewith,⁴ he cannot sue on the renewed bill.⁵

Bill as Payment.—A bill given in renewal of another bill operates in the same way as a bill given in respect of any other debt. The ordinary effect of giving a bill is that the remedy for the debt is suspended until the dishonour of the bill. The bill operates as conditional payment, the condition being that the debt revives if the bill cannot be realised. It is immaterial whether the bill be payable on demand or *in futuro*.⁶ In France in the absence of special agreement the renewal of a bill extinguishes the original bill by *novatio*.⁷

¹ *Maillard v. Page* (1870), 5 L. R. Ex. 312; Cf. *Innes v. Munro* (1847), 1 Exch. 473; *Torrance v. Bank of British America* (1874), 5 L. R. P. C. 246, as to construction of agreements to renew.

² *Southall v. Rigg* (1851), 11 C. B. 481.

³ *Chapman v. Black* (1819), 2 B. & Ald. 538; *Hay v. Ayling* (1851), 16 Q. B. 423.

⁴ *Lee v. Zagury* (1817), 8 Taunt. 114.

⁵ See, however, two apparent but not real exceptions, *Mather v. Maidstone* (1855), 18 C. B. 273; *Flight v. Reed* (1863), 1 H. & C. 703.

⁶ *Currie v. Misa* (1875), 10 L. R. Ex. at 163, 164, Ex. Ch.

⁷ *Nouguier*, §§ 1032—1042.

CHAPTER VIII.

LIMITATIONS.

Statute of Limitations.

Art. 252. Subject to Arts. 191 and 253, no action on a bill can be maintained against any party thereto after the expiration of six years from the time when a cause of action first accrued to the *then* holder against such party.¹

Limitation, how computed against the several parties.

ILLUSTRATION.

C. is the holder of a dishonoured bill. Three years after the dishonour he indorses the bill to D. D. must sue the acceptor within the next three years, though he has six years within which he may sue C.

Explanation 1.—As regards the acceptor, time begins to run from the maturity of the bill, unless—

- (1.) Presentment for payment is necessary in order to charge the acceptor, in which case time (probably) runs from the date of such presentment;² or
- (2.) The bill is accepted after its maturity, in which

¹ Cf. 21 Jac. 1. c. 16. *Whitehead v. Walker* (1842), 9 M. & W. 506; *Woodruff v. Moon* (1850), 8 Barb. 171, New York.

² Cf. Art. 172.

Limita-
tion, how
computed
against the
several
parties.

case time (probably) runs from the date of acceptance.¹

ILLUSTRATIONS.

1. Bill payable *in futuro*, e.g. three months after date or sight. Time runs in favour of the acceptor from the day the bill is payable, not from the day the acceptance is given.²

2. B. in 1840 gives a blank acceptance to C. In 1850 it is filled up as a bill payable three months after date, and negotiated to a *bonâ fide* holder. Time runs in favour of B. from the day the bill was payable.³

3. Note payable on demand (with or without interest), and issued on the day it bears date. Time runs in favour of the maker from the date of the note, and not from the date of demand.⁴

4. Note payable on demand, dated January 1, is not issued till July 1. Time runs in favour of the maker from July 1, the day of issue.⁵

5. Note payable three months after demand. Time runs in favour of the maker from the day the bill is payable.⁶

Explanation 2.—As regards the drawer or an indorser, time (generally) begins to run from the date when notice of dishonour is received.⁷

ILLUSTRATIONS.

1. Bill payable ninety days after sight is dishonoured by non-acceptance. As regards the drawer time runs against the holder from the dishonour by non-acceptance and notice thereof. If the bill is presented for payment and again dishonoured, no fresh cause of action arises.⁸

2. A. draws a bill on B. C. indorses it for A.'s accommodation. The bill is dishonoured, and five years after the dishonour, C., as

¹ Cf. Art. 34.

² *Holmes v. Kerrison* (1810), 2 Taunt. 323; Cf. *Fryer v. Roe* (1852), 12 C. B. 437. See Art. 20, computation of time of payment.

³ *Montague v. Perkins* (1853), 22 L. J. C. P. 187. Cf. Art. 23.

⁴ *Norton v. Ellam* (1837), 2 M. & W. 461; Cf. *Jackson v. Ogg* (1859), Johns. at 400; *Wheeler v. Warner* (1872), 47 New York R. 519.

⁵ *Savage v. Aldren* (1817), 2 Stark. 232; Cf. *Richards v. Richards* (1831), 2 B. & Ad. 447; *Watkins v. Figg* (1863), 11 W. R. 258.

⁶ *Thorpe v. Combes* (1826), 8 D. & R. 347; Cf. *Way v. Bassett* (1845), 5 Hare. 55.

⁷ Cf. *Castrigue v. Bernabo* (1844), 6 Q. B. 498, and Art. 189.

⁸ *Whitehead v. Walker* (1842), 9 M. & W. 506.

indorser, is obliged to pay the holder. Two years later (*i.e.*, seven years after the dishonour), C. sues A. on the bill. The action is barred. *Aliter* if C. sued A. on the implied contract of indemnity.¹ Limitation, how computed against the several parties.

3. C. is the indorser of a bill or note payable on demand. Time (presumably) does not begin to run in favour of C. until demand has been made and notice given.

NOTE.—In England it is held that the holder's right of action against the drawer or an indorser is not complete until notice of dishonour is received;² when then does the cause of action arise when the notice is delayed or lost in the post? (Cf. Art. 193.) Perhaps from the time when it ought to have been received. In America the balance of authority favours the view that the cause of action is complete when notice of dishonour is sent.³ In cases where notice of dishonour is unnecessary (Art. 200) probably the cause of action arises on dishonour.

Explanation 3.—When an action is brought against a party to a bill, to enforce an obligation collateral to the bill, though arising out of the bill transaction, the nature of the particular transaction determines the period from which time begins to run.

ILLUSTRATIONS.

1. B. accepts a bill to accommodate the drawer. It is dishonoured, and two years afterwards B. is compelled to pay the holder. B. sues the drawer on the implied agreement to indemnify. Time runs from the date B. was compelled to pay, and not from the maturity of the bill.⁴

2. B. authorises A., an agent abroad, to draw upon him for the price of goods to be shipped to B. B. dishonours a draft so drawn, and A. is compelled to take it up. A. can sue B. on an implied contract to indemnify. Time runs from the date when A. was compelled to pay.⁵

3. A., intending to lend C. 50*l.*, draws a cheque in C.'s favour for

¹ *Webster v. Kirk* (1852), 17 Q. B. 944; Cf. *Woodruff v. Moore* (1850), 8 Barb. 171 New York.

² *Castrigue v. Bernabo* (1844), 6 Q. B. 498.

³ *Daniel*, § 1212; *Shed v. Brett* (1823), 18 Massachusetts. R. 401.

⁴ *Reynolds v. Doyle* (1840), 1 M. & Gr. 753; *Angrone v. Tippet* (1865), 11 L. T. N. S. 708; but cf. *Coppin v. Gray* (1842), 11 L. J. Ch. 105, as to a premature payment; see *Davies v. Humphries* (1846), 6 M. & W. 153, contribution among co-makers.

⁵ *Huntley v. Sanderson* (1833), 1 Cr. & M. 467.

Limitation, how computed against the several parties. that sum. A. sues C. to recover the loan. Time runs from the date when the cheque was cashed.¹

NOTE.—See Art. 230, n., distinguishing a right of action on a bill from a right of action which a party to a bill may have arising out of the bill transaction but independent of the instrument. *Foreign laws and conflict of laws.*—In France the period of limitations is five years, and the time it seems begins to run against acceptor, drawer, and indorsers from the day of protest.² By German Exchange Law, Art. 77, the limitation as regards the acceptor is three years, starting from the maturity of the bill; but as regards the drawer or indorsers it is three months, starting from the day of protest, if the drawer or indorser live and the bill be payable in Europe. Where laws conflict as to time of limitation, and the limitation, as in England, merely bars the remedy, the *lex fori* governs.³ *Aliter* probably when lapse of time operates as a discharge. Cf. Art. 231.

Statute, how defeated. Art. 253. Any circumstance which postpones or defeats the operation of the statute of limitations in the case of an ordinary contract postpones or defeats it in like manner in the case of a bill.

No indorsement or memorandum of any payment written or made upon a bill by or on behalf of the party to whom such payment is made is sufficient to defeat the operation of the statute.⁴

ILLUSTRATIONS.

1. The holder of an accepted bill dies intestate before its maturity. The statute does not begin to run until an administrator is appointed.⁵

2. The holder of a bill at the time of its dishonour is a minor or a married woman or a lunatic. The statute does not begin to run against such holder until the disability ceases.⁶

3. Note payable on demand with interest. Four years after its issue the holder sues the maker for interest and recovers. Three

¹ *Garden v. Bruce* (1868), 3 L. R. C. P. 300.

² French Code, Art. 189, *Nouguier*, § 1605.

³ *Don v. Lippman* (1837), 5 Cl. & F. 1. H. L.

⁴ 9 Geo. 4, c. 14, s. 3.

⁵ *Murray v. East India Co.* (1821), 5 B. & Ald. 204; see conversely *Maxwell v. Tushill* (1878), 1 Ir. L. R. Ch. D. 250, death of acceptor intestate.

⁶ Cf. 21 Jac. 1, c. 16; *Scarpalini v. Atcheson* (1845), 7 Q. B. 864.

years later (*i.e.*, seven years after issue of note) the holder sues the Statute, maker on the note. The action is barred.¹ *Aliter* if the payment ^{how} defeated. of interest had been voluntary.

4. An acknowledgment in writing signed by the party sought to be charged defeats the operation of the statute, *e.g.*, the maker of a note twenty years after its maturity signs his name on the back and adds the date. The holder can sue the maker within six years after this acknowledgment.²

NOTE.—When the statute begins to run nothing stops it. It is clear then that if a dishonoured bill be indorsed to an infant the time still runs on.³ On the other hand, if the holder of a bill at the time of dishonour be an infant, and he subsequently indorse it while still an infant to an adult, it is conceived that the statute runs from the indorsement. It seems that an acknowledgment to the holder enures for the benefit of a subsequent holder.⁴

¹ *Morgan v. Rowlands* (1872), 7 L. R. Q. B. 493; see also *Harding v. Edgecumbe* (1859), 28 L. J. Ex. 313, payment by agent.

² *Bourdin v. Greenwood* (1872), 13 L. R. Eq. 281. See as to acknowledgments, *Re River Steamer Co.* (1871), 6 L. R. Ch. at 828, *Mellish*, L. J.; *Chasemore v. Turner* (1875), 10 L. R. Q. B. 500, Ex. Ch.

³ *Rhodes v. Smethurst* (1840), 6 M. & W. 351, Ex. Ch.

⁴ *Byles*, p. 358; Cf. *Cripps v. Davis* (1842), 12 M. & W. 159.

CHAPTER IX.

PROVISIONS PECULIAR TO CHEQUES.

[EXPLANATORY HEAD-NOTE.—The term “bill” as used in the articles of this digest includes cheques as well as ordinary bills of exchange; and subject to the provisions of this chapter, the provisions of the digest relating to bills of exchange payable on demand apply equally to cheques. See Introd., p. iv., and head-note to Chap. I.]

Cheque
defined.

Art. 254. A cheque is a bill of exchange¹ drawn by a customer on his banker² payable on demand.³

NOTE.—See cheques compared with and distinguished from ordinary bills of exchange by Parke, B.,⁴ Erle, J., and Byles, J.,⁵ Palles, C. B.,⁶ and the Supreme Court of the United States.⁷ All cheques are bills of exchange, but all bills of exchange are not cheques, therefore an authority to draw cheques does not necessarily include an authority to draw bills (cf. Art. 74). Apart from statute the distinctions between cheques and ordinary bills of exchange arise from the relationship of banker and customer necessarily subsisting between the drawer and drawee of a cheque. See further the notes to Arts. 5, 11, 16, 67, 79, 105, 133, 160, 162. A cheque is intended for prompt presentment, while a note payable

¹ Cf. *Eyre v. Waller* (1860), 29 L. J. Ex. 246; *Hopkinson v. Forster* (1874), 19 L. R. Eq. 74; 33 & 34 Vict. c. 97, § 43.

² Cf. 23 & 24 Vict. c. 111, § 19; and 39 & 40 Vict. c. 81, § 3.

³ *Id.*, and *Forster v. Mackreth* (1867), 2 L. R. Ex. 163.

⁴ *Ramechurn v. Lachmeechund* (1854), 9 Moore P. C. at 69.

⁵ *Keene v. Beard* (1860), 8 C. B. N. S. at 380, 381, as modified by *Hopkinson v. Forster* (1874), 19 L. R. Eq. at 76, Jessel, M. R.

⁶ *Lynn v. Bell* (1876), 10 Ir. R. C. L. at 490.

⁷ *Merchants Bank v. State Bank* (1870), 10 Wallace at 647.

on demand is deemed to be a continuing security.¹ In France, Cheque defined.
cheques are regulated by the "Loi du 23 Mai, 1865," which defines
a cheque as "L'écrit qui sous la forme d'un mandat de paiement
sert au tireur à effectuer le retrait à son profit ou au profit d'un tiers
de tout ou partie des fonds portés au crédit de son compte et
disponibles."

Art. 255. A cheque may be drawn for any sum. Sum payable.
There is no maximum or minimum² limit.

Art. 256. A cheque is not intended for acceptance, Accept-
but for prompt presentment and payment.³ ance of
cheque.

NOTE.—At common law there is no objection to the acceptance
of a cheque if the holder likes to take it in lieu of payment, but
the Bank Charter Acts would in most cases render this illegal
(cf. Art. 69). *Marked Cheques*.—As between banker and banker
marking a cheque may perhaps amount to a binding representation
that it will be paid,⁴ but it is clearly not an acceptance which the
holder could take advantage of (cf. Art. 32). As to certified
cheques in the United States see *Daniel*, §§ 1601—1611.

Art. 257. A cheque is deemed to have been pre- Reason-
sented within a reasonable time when presented able time
according to the following rules :— for pre-
sentment.

- (1.) If the person who receives a cheque and the
banker on whom it is drawn are in the same
place the cheque must, in the absence of
special circumstances,⁵ be presented for pay-
ment on the day after it is received.⁶
- (2.) If the person who receives a cheque and the
banker on whom it is drawn are in different
places, the cheque must, in the absence of

¹ *Brooks v. Mitchell* (1841), 9 M. & W. at 18, Parke, B.; *Chartered Bank v. Dickson* (1871), 3 L. R. P. C. at 579, Ld. Cairns.

² 23 & 24 Vict. c. 111, § 19; Cf. Art. 11 n.

³ Cf. *Ramchurn v. Lachmeechund* (1854), 9 Moore P. C. at 69, Parke, B.

⁴ Cf. *Robson v. Bennet* (1810), 2 Taunt. 388; and see *Pollard v. Bank of England* (1871), 6 L. R. Q. B. 623; *Goodwin v. Roberts* (1875), 10 L. R. Ex. at 351, 352.

⁵ Cf. Arts. 169, 201, excuses for delay, and *Firth v. Brooks* (1861), 4 L. T. N. S. 467.

⁶ *Alexander v. Burchfield* (1842), 7 M. & Gr. 1061.

Reason-
able time
for pre-
sentment.

special circumstances,¹ be forwarded for presentment on the day after it is received, and the agent to whom it is forwarded must, in like manner, present it or forward it on the day after he receives it.²

Explanation.—In computing time non-business days must be excluded.³

Exception.—When a cheque is crossed, and the party sought to be charged himself made the crossing, or assented thereto, any delay caused by presenting the cheque pursuant to such crossing is excused.⁴

ILLUSTRATIONS.

1. C., in London, receives a cheque drawn on a London banker on Monday. On Tuesday, instead of presenting it himself he pays it in to his bankers who present on Wednesday. C. has not presented the cheque within a reasonable time. *Aliter*, it seems, if the cheque was crossed when C. received it.⁵

2. C., on Monday, in London, receives a cheque drawn on a Jersey bank. On Tuesday C. pays it in to a London bank. The London bank on the same day forward it by post direct to the Jersey bank requesting payment. C. has duly presented the cheque.⁶

NOTE.—The result of the cases seems to be this. A party who receives a cheque has a clear day for presenting or forwarding it. If, instead of presenting it himself he forwards it to someone else to present the question is, was he acting reasonably in so doing. A principal of course is responsible to third parties for the act of his agents, *e.g.*, if a person forwards a cheque to an agent, and the agent instead of presenting it himself unreasonably forwards it to another agent the loss as regards third parties falls on the principal, though he may have a remedy over against his agent. The question whether a cheque has been presented within a reasonable time may arise between drawer and holder, or between indorser and indorsee,

¹ Cf. Arts. 169, 201, excuses for delay, and *Firth v. Brooks* (1861), 4 L. T. N. S. 467.

² *Hare v. Henty* (1861), 30 L. R. C. P. 302; *Prideaux v. Criddle* (1869), 4 L. R. Q. B. 455.

³ Cf. 34 & 35 Vict. c. 17, and Arts. 20, 195, 196.

⁴ Cf. *Alexander v. Burchfield* (1842), 7 M. & Gr. at 1067. Since this case the crossing of cheques has received legislative sanction. See Art. 265.

⁵ *Id.*

⁶ *Heywood v. Pickering* (1874), 9 L. R. Q. B. 428.

or between transferor by delivery and transferee,¹ or between customer and banker.² In each case it must be determined as between the particular parties. See a different standard of reasonable time as between vendor and vendee where the vendor of goods was paid by the cheque of the vendee's agent.³

Reasonable time for presentment.

Art. 258. The drawer of a cheque is not discharged by the holder's omission to present it for payment within a reasonable time as defined by Art. 257, unless the drawer has suffered actual damage through the delay.⁴

Presentment to charge drawer.

ILLUSTRATIONS.

1. A. draws a cheque in favour of C. in 1870. It is presented for payment in 1872, and dishonoured. No reason for the delay is shown. A. is not discharged. The holder can sue him.⁵

2. A cheque drawn by A. on a London bank is handed to the payee in London on Monday. On Wednesday morning the bank on which it is drawn stops payment, A. having at that time funds there sufficient to meet it. The cheque is presented on Wednesday afternoon. A. is discharged.⁶

Explanation.—When a cheque is not presented within a reasonable time of its issue, and the drawer sustains actual damage through the delay, it is (probably) no excuse that such delay was caused by the *bond fide* negotiation of the cheque through different hands.⁷

NOTE.—In *Laws v. Rand* (1857),⁸ it is suggested that the omission to present a cheque within six years of its issue would in any

¹ See e.g., *Moule v. Brown* (1838), 4 Bing. N. C. 266.

² See e.g., *Hare v. Henty* (1861), 30 L. J. C. P. 302.

³ *Hopkins v. Ware* (1869), 4 L. R. Ex. 268.

⁴ *Alexander v. Burchfield* (1842), 7 M. & Gr. 1061; *Robinson v. Hawksford* (1846), 9 Q. B. 52; *Laws v. Rand* (1857), 27 L. J. C. P. 76; *Bailey v. Bodenham* (1864), 33 L. J. C. P. 253; *Heywood v. Pickering* (1874), 9 L. R. Q. B. at 432.

⁵ *Laws v. Rand* (1857), 27 L. J. C. P. 76.

⁶ *Alexander v. Burchfield* (1842), 7 M. & Gr. 1061.

⁷ *Byles*, 10th ed., p. 21; *Daniel*, § 1596; see Art. 254 n.; but Cf. *Bailey v. Bodenham* (1864), 33 L. J. C. P. 253, where, however, the point was not argued and the drawer was held to be discharged on another ground.

⁸ 27 L. J. C. P. 76; Cf. *Pott v. Clegg* (1847), 16 M. & W. 321, for a reason.

Present:
ment to
charge
drawer,

case discharge the drawer. No case against an indorser has arisen in England. It is conceived that he would be discharged by the omission to present within a reasonable time, irrespective of actual damage.¹

When
deemed
overdue.

Art. 259. It is uncertain when a cheque not known to have been dishonoured is to be deemed overdue for the purpose of affecting the holder with equities of which he had no notice at the time the cheque was negotiated to him.²

ILLUSTRATION.

A. is induced by fraud to draw a cheque in favour of C. Six days after its date C. indorses the cheque to D. D. has not taken an overdue cheque, therefore if he gave value and had not notice of the fraud he has a good title.³

NOTE.—Cf. Arts. 133, 134, as to overdue bills of exchange, Art. 282 as to overdue note on demand, and see Art. 138. In America a cheque indorsed five months after date has been held to have been negotiated when overdue.⁴

Banker's
duty to
honour
cheques.

Art. 260. A banker, as such, is bound to honour his customers' cheques when duly presented to the extent of the balance which the customer then has in his hands. If the banker make default he is liable to his customer in an action for damages.⁵

Explanation 1.—A banker is entitled to have funds paid in a reasonable time before the customer draws against them in order that he may be aware of the state of accounts between them when the cheque is presented.⁶

¹ Cf. *Smith v. Jones* (1838), 20 Wend. 192, New York.

² *Serrel v. Derbyshire Ry. Co.* (1850), 9 C. B. 811 at 828, 829; Cf. *Boehm v. Stirling* (1797), 7 T. R. 423.

³ *Rothschild v. Corney* (1829), 9 B. & C. 388.

⁴ *First Nat. Bank v. Needham* (1870), 29 Iowa R. 249; Cf. *Himmelman v. Hotelling* (1870), 6 Amer. R. 600.

⁵ *Marzetti v. Williams* (1830), 1 B. & Ad. 415; *Whitaker v. Bank of England* (1835), 1 C. M. & R. 744; *Gray v. Johnston* (1868), 3 L. R. H. L. 1, see at 14, per Ld. Westbury; Cf. *Goodwin v. Roberts* (1875), 10 L. R. Ex. at 351, Ex. Ch. As to the measure of damages, see Art. 209.

⁶ *Whitaker v. Bank of England* (1835), 1 C. M. & R. at 749—750, *Parks, B.*; Cf. *Bransby v. East London Bank* (1866), 14 L. T. N. S. 403.

Explanation 2.—As regards banks having several branches, where a customer has an account at one branch, the other branches at which he has no account are not bound to honour his cheques;¹ but where a customer has accounts at two or more branches the bank is entitled to combine such accounts against him.²

Banker's
duty to
honour
cheques.

NOTE.—The combined accounts must be kept in the same right, e.g., a personal and a trust account cannot be combined. See the whole status of branch banks in regard to bills discussed by the Privy Council.³ *Duty as to Bills.*—The contract implied by law between banker and customer may of course be modified by special agreement, but apart from this money in the hands of a banker is in effect money lent, re-payable on demand, which may be either personal or by cheque.⁴ When a customer accepts a bill payable at his bankers it is an authority to the banker to pay it;⁵ but *qua*. if the banker is bound to do so in the absence of special arrangement?⁶ In the case of a cheque he is protected against the consequences of a forged indorsement (Art. 263), in the case of a bill he is not (Art. 81). In the absence of special agreement a banker is clearly under no obligation to accept his customers bills (Art. 208), nor it seems is he bound to pay a bill, other than a cheque, drawn on him by a customer (Art. 208), and a post dated cheque known to be such is an ordinary bill of exchange payable after date.⁷ In the absence of special agreement, express or implied, founded on consideration, a banker is of course under no obligation to let a customer overdraw.⁸

Art. 261. The authority of a banker to pay a cheque drawn on him by a customer is determined by notice of the customer's death,⁹ or bankruptcy.¹⁰

Death or
bank-
ruptcy of
drawer.

¹ *Woodland v. Fear* (1857), 7 E. & B. 519.

² *Garnet v. M'Kewan* (1872), 8 L. R. Ex. 10.

³ *Prince v. Oriental Bank* (1878), 3 L. R. Ap. Ca. 825.

⁴ *Cf. Pott v. Clegg* (1847), 16 M. & W. 821; *Foley v. Hill* (1848), 2 H. L. Ca. 28.

⁵ *Kymer v. Laurie* (1849), 18 L. J. Q. B. 218.

⁶ *Cf. Roberts v. Tucker* (1851), 16 Q. B. at 579.

⁷ *Forster v. Mackreth* (1867), 2 L. R. Ex. 163; *Cf. Emmanuel v. Roberts* (1868), 9 B. & S. 121, and Art. 57.

⁸ *Cumming v. Shand* (1832), 29 L. J. Ex. at 132.

⁹ *Rogerson v. Ladbroke* (1822), 1 Bing. N. C. 98; *Cf. Tate v. Hilbert* (1793), 2 Ves. jr. at 118.

¹⁰ *Vernon v. Hankey* (1787), 2 T. R. 118; *Ex parte Sharp* (1844), 3 M. D. & D. 490.

Death or
bank-
ruptcy of
drawer.

Gift in
contem-
plation of
death.

NOTE.—The banker's duty to pay is determined by the fact of death or bankruptcy, but a payment made in ignorance of the fact is valid.

Art. 262. A cheque given by the drawer in contemplation of death must be presented for payment by the donee before the drawer's death in order to entitle the donee to receive the amount out of the drawer's estate as a *donatio mortis causa*.

ILLUSTRATIONS.

1. A. draws a cheque in favour of C., and in contemplation of death hands it to him as a gift. After A.'s death it is presented and payment refused. C. cannot claim for the amount against A.'s estate.¹

2. A., in contemplation of death, draws a cheque and gives it to C. After A.'s death C. presents the cheque, and the bankers, in ignorance of A.'s death, pay it. C. can (probably) retain the money as against A.'s representatives.²

3. A., in contemplation of death, draws a cheque and gives it to C. Before A.'s death C. presents it for payment. The bankers refuse to pay it, because doubtful of A.'s signature. A. dies, and payment is subsequently refused on that ground. C., the donee, is entitled to receive the amount out of A.'s estate.³

4. A., in contemplation of death, draws a cheque and gives it to C. Before A.'s death C. negotiates the cheque for value. The holder can claim for the amount against A.'s estate.⁴

NOTE.—Cf. Art. 105. The position of the donee of a cheque is this: he cannot enforce payment against the drawer's estate because he is not a holder for value (Art. 91), and the banker's authority to pay is revoked by notice of the drawer's death (Art. 261). A cheque given for value, it is conceived, is on the same footing as an ordinary bill of exchange. But, assuming that as between drawer and payee, it is a mere authority to receive the amount, still an authority coupled with an interest is not revoked by death.⁵

¹ *Hewitt v. Kaye* (1868), 6 L. R. Eq. 198; *Beak v. Beak* (1872), 13 L. R. Eq. 489; Cf. *Jones v. Lock* (1865), 1 L. R. Ch. 25.

² Cf. *Tate v. Hilbert* (1793), 2 Ves. jr. at 118. The bankers are justified in paying, see Art. 261.

³ *Bromley v. Brunton* (1868), 6 L. R. Eq. 275.

⁴ *Rolls v. Pearce* (1877), 5 L. R. Ch. D. 730.

⁵ Cf. *Hatch v. Searles* (1854), 2 Sm. & G. at 151 and 155; see *passim*; *Snaith v. Mingay* (1813), 1 M. & S. at 95.

Art. 263. A banker who, as drawee,¹ pays in good faith² a genuine³ cheque which is held under a forged or unauthorised indorsement, is deemed to have paid the same in due course.⁴

Payment
of cheque
held under
forged in-
dorsement.

ILLUSTRATIONS.

1. A. draws a cheque payable to C. or order. It is stolen, and C.'s indorsement is forged by the thief. The bankers on whom it is drawn pay it. They can debit A. with the amount so paid.⁵

2. A., who is indebted to C., draws a cheque payable to C., or order, and gives it to X., who is C.'s agent. X., who has no authority to indorse cheques, indorses it "per proc" in C.'s name, obtains payment and makes away with the money. The loss falls on C. He has no remedy against A. or the bankers.⁶

3. A., who is indebted to C., draws a cheque payable to C. or order. The cheque is stolen while still in A.'s possession. C.'s indorsement is forged, and the cheque is paid. The loss falls on A., he has not paid C.;⁷ but if A. can find the person who presented the cheque for payment he can recover the money from him.⁸

Art. 264. A cheque on payment becomes the property of the drawer,⁹ but the banker who pays it is entitled to keep it as a voucher until his account with his customer is settled.¹⁰

Property
in paid
cheque.

¹ Cf. *Ogden v. Benas* (1874), 9 L. R. C. P. 513; see *Halifax Union v. Wheelwright* (1875), 10 L. R. Ex. 183, person acting in double capacity.

² *Hare v. Copland* (1862), 13 Ir. C. L. R. at 438.

³ Cf. *Orr v. Union Bank* (1854), 1 Macq. H. L. Ca. 513.

⁴ 16 & 17 Vict. c. 59, § 19, explained by C. A. in *Charles v. Blackwell* (1877)

2 L. R. C. P. D. at 156.

⁵ *Id.*

⁶ *Charles v. Blackwell* (1877), 2 L. R. C. P. D. 151, C. A.

⁷ *Id.* at 157.

⁸ *Ogden v. Benas* (1874), 9 L. R. C. P. 513.

⁹ *R. v. Watts* (1850), 2 Den. C. C. 15.

¹⁰ Cf. *Charles v. Blackwell* (1877), 2 L. R. C. P. D. at 162.

Crossed Cheques.

General
and special
crossings.

Art. 265. A cheque is crossed generally which bears across its face (a) the words "and company," or any abbreviation thereof, between two parallel transverse lines, either with or without the words "not negotiable," or (b) two parallel transverse lines simply, either with or without the words "not negotiable."

A cheque is crossed specially which bears across its face an addition of the name of a banker, either with or without the words "not negotiable."¹

Who may
cross a
cheque.

Art. 266. An uncrossed cheque may be crossed generally or specially by any lawful holder, and a cheque crossed generally may be specially crossed by any lawful holder, and when a cheque is crossed generally or specially any lawful holder may add the words "not negotiable."²

NOTE.—Presumably a cheque may be crossed by the drawer, but the Act does not say so in terms, and as a rule the term holder does not include the drawer of a bill before issue.

Two or
more
special
crossings.

Art. 267. Where a cheque is crossed specially to more than one banker, the banker on whom it is drawn must refuse payment thereof.³

Exception.—Where a cheque is crossed specially the banker to whom it is crossed may again cross it specially to another banker, his agent for collection.⁴

Effect of
crossing on
drawer.

Art. 268. When the banker on whom a crossed cheque is drawn has in good faith and without negli-

¹ Crossed Cheques Act, 1876, 39 & 40 Vict. c. 81, § 4.

² Id., § 5.

³ Id., § 8.

⁴ Id., §§ 5 and 8.

gence paid such cheque (a) if crossed generally to a banker, or (b) if crossed specially to the banker to whom it is crossed, or his agent for collection, being a banker the drawer is entitled to the same rights and to be placed in the same position as if the amount of the cheque had been paid to the true owner thereof.¹

Effect of crossing on drawer.

Art. 269. A person who takes a cheque crossed generally or specially which bears also the words "not negotiable" does not acquire and cannot give a better title to the cheque than that which the person from whom he took it had.²

Effect of crossing on holder and agent for collection.

Exception.—A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.³

ILLUSTRATION.

A cheque payable to bearer and crossed generally and with the words "not negotiable" is stolen. The thief gets C., a tradesman, to cash it for him. C. acts *bonâ fide* in doing so. C. pays the cheque into his bankers, who present it and obtain payment. The banker who pays and the banker who receives payment are protected, but C. is liable to refund the money to the true owner. Again, assuming the cheque to have been stopped, C. cannot sue the drawer.

NOTE.—The words "not negotiable" in the Crossed Cheques Act mean merely "not fully negotiable." A cheque so crossed is in effect put on the same footing as an overdue bill (see Art. 134); no liability is imposed thereby on a banker who pays it without negligence. A holder who has a good title can still transfer it, and the transferee is entitled to receive payment, but where the title of the holder is defective a subsequent holder for value is deprived of

¹ Crossed Cheques Act, 1876, 39 & 40 Vict. c. 81, § 9.

² *Id.*, § 12.

³ *Id.*, § 12.

Effect of crossing on holder and agent for collection. the protection usually afforded to a *bonâ fide* holder for value without notice.

Art. 270. When a cheque is crossed generally the banker on whom it is drawn must not pay it otherwise than to a banker, and when a cheque is crossed specially the banker on whom it is drawn must not pay it otherwise than to the banker to whom it is crossed, or to his agent for collection, being a banker.¹

Effect of crossing as regards (drawee) banker.

If the banker on whom a crossed cheque is drawn pays it in good faith and without negligence as directed above he is entitled to the same rights and to be placed in the same position in all respects as if the amount of the cheque had been paid to and received by the true owner thereof.²

If he do not pay it, as directed above, he is liable to the true owner of the cheque for any loss such true owner may sustain owing to the cheque not having been so paid.³

NOTE.—There is no privity of contract between the holder of a cheque and the banker on whom it is drawn (Art. 210), therefore a banker incurs no liability to the *holder* by refusing to pay a crossed cheque. If he pay it in contravention of the directions of the crossing he is liable to the true owner for a breach of his statutory duty; and if he negligently or dishonestly pay it to a wrongful holder he may be liable to the true owner in an action of trover.⁴

Invisible crossing or obliteration.

Exception.—When a cheque is presented for payment which does not at the time of presentation appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by Art. 266, a banker paying the cheque in good faith and without

¹ Crossed Cheques Act, 1876, 39 & 40 Vict. c. 81, §§ 7 and 10.

² *Id.*, § 9.

³ *Id.*, § 10.

⁴ *Of. Smith v. Union Bank* (1875), 10 L. R. Q. B. at 296, and 1 L. R. Q. B. D. at 35, as modified by the present Act.

negligence is not responsible, and does not incur any liability ; nor can the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated, or having been altered or added to otherwise than as authorised by Art. 266, and of payment being made otherwise than pursuant to the directions of such crossing.¹

Invisible
crossing or
obliteration.

¹ 39 & 40 Vict. c. 81, § 11 ; Cf. Art. 138.

CHAPTER X.

PROVISIONS PECULIAR TO PROMISSORY NOTES.

[EXPLANATORY HEAD-NOTE.—The term “bill” in contradiction to “bill of exchange,” as used in the articles of this digest, includes *mutatis mutandis* promissory note as well as bill of exchange, the maker of a promissory note corresponding with the acceptor of a bill of exchange. See Introd., p. iv., and head-note to Chapter I. In this chapter are collected the provisions which apply exclusively to promissory notes.]

Note
defined.

Art. 271. A promissory note is an unconditional written promise, signed by the maker, to pay absolutely and at all events a sum certain in money, either to the bearer or to a person therein designated, or his order.¹

NOTE.—See a promissory note compared with a bill of exchange by Lord Mansfield,² and Parke, B.,³ and cf. Art. 286 n. See also some points of difference between a bank note and an ordinary note referred to by Bramwell, B.⁴ *Foreign Law*.—The French law as to notes (*billets à ordre*), is contained in French Code de Commerce, Arts. 187, 188. Although the Code is silent on the point, it seems that notes payable to bearer (*billets au porteur*), are to some extent recognised, see *Nouguier*, §§ 1565—1578; German Exchange Law, Arts. 96—100, deals with notes.

¹ *Coleham v. Cooke* (1742), Willes, 393 at 396, 397; Cf. *Ferris v. Bond* (1821) 4 B. & Ald. 679.

² *Heylyn v. Adamson* (1758), 2 Burr. at 676.

³ *Gibb v. Mather* (1832), 2 Cr. & J. at 262—263, Ex. Ch.

⁴ *Litchfield Union v. Greene* (1857), 1 H. & N. at 889.

Form and Interpretation.

Art. 272. There must be two parties to a promissory note in its origin, and they must be different persons, namely—

- (1.) The person who makes the promise, called the maker.
- (2.) The person in whose favour the promise is made, called the payee. Cf. Art. 2.

Explanation.—A writing in the form of a note payable to maker's order is not a note, but by indorsement it becomes one.¹

ILLUSTRATIONS.

1. B. makes a note payable to his own order, and indorses it in blank. This is a valid note payable to bearer.²

2. B. makes a note payable to his own order, and indorses it to C. This is a valid note payable to C. or order.³

3. B., C. and X. make a joint and several note payable to C. and X. or order. This is a valid note. C. and X. may sue B. on his several liability.⁴

4. B. & Co. make a note payable to C. & Co. or order. X. is a partner in both firms. C. & Co. cannot sue B. & Co. on this note. But if C. & Co. indorse the note, the indorsee could sue.⁵

Art. 273. A promissory note is inchoate and incomplete until delivery thereof be made to the payee.⁶

Art. 274. A promissory note may be in any form of words which comply with the requisitions of Art.

¹ *Hooper v. Williams* (1848), 2 Exch. 13.

² *Id.*; *Masters v. Baretto* (1849), 8 C. B. 433.

³ *Gay v. Lander* (1848), 17 L. J. C. P. 286.

⁴ *Beecham v. Smith* (1858), E. B. & E. 442.

⁵ *Lindley*, 3rd ed., 219; Cf. *Neale v. Turton* (1827), 4 Bing. 149.

⁶ *Chapman v. Cottrell* (1865), 3 H. & C. 857; Cf. Arts. 53—55, as to delivery.

Note may be in any form of words. 271,¹ and from which the intention to make a note appears.²

ILLUSTRATIONS.

1. An I. O. U. containing a promise to pay is a note.³

2. The following is not a note: "Borrowed of C. 100*l.* to account for on behalf of the X. Club at — months' notice, if required." (Signed) T. B.⁴

NOTE.—For further illustrations, see Arts. 2, 8, 9, 10, 12, 13, 14, 19, 20, 23, 58. The promise of the maker in a note corresponds with the order to the drawee in a bill of exchange accepted generally. It may be regarded as the same contract stated conversely, and the same considerations apply to both, see Art. 10. An instrument invalid as a negotiable promissory note may of course be effectual as an agreement,⁵ or an I. O. U. Subjoined is an ordinary form of note.

£100

1, Duke Street, London,

January 1, 1870.

On demand I promise to pay to James Charles, or order, one hundred pounds, for value received.

John Brown.

Joint and several note.

Art. 275. There may be two or more makers to a promissory note, and they may be liable thereon jointly, or jointly and severally, according to its tenour.⁶

ILLUSTRATIONS.

1. A note in the form "I promise," signed by several persons who are not partners, is their joint and several note.⁷

2. A note in the form "We promise," signed by several persons, is their joint note only.⁸

3. B., X. and Y. are partners. B. makes a note in the form "I

¹ *Hooper v. Williams* (1848), 2 Exch. at 20. See English and American cases reviewed in *Currier v. Lockwood* (1873), 16 Amer. R. 40.

² *Sibtree v. Tripp* (1846), 15 M. & W. at 29; Cf. *Jackson v. Slipper* (1869), 19 L. T. N. S. 640.

³ *Brooks v. Elkins* (1836), 2 M. & W. 74.

⁴ *White v. North* (1849), 3 Exch. 689.

⁵ Cf. *White v. North* (1849), 3 Exch. 689.

⁶ Cf. *Ex parte Honey* (1871), 7 L. R. Ch. 178.

⁷ *Monson v. Drakeley* (1878), 16 Amer. R. 74; Cf. *Ridd v. Moggridge* (1857), 2 H. & N. 568, dub. Pollock, C. B.

Byles, 12th ed., p. 7; *Parsons*, v. 1, p. 247

promise," signing "for X. and Y." T. B. This is the joint note of the firm, and not a several note by B.¹ Joint and several note.

Explanation 1.—A partner as such cannot bind his co-partners severally, but by a joint and several note he may bind the firm jointly² and himself severally.³

Explanation 2.—A maker cannot be added to a joint and several note after it has been issued.⁴

NOTE.—See further Arts 234 and 245. A bill of exchange differs from a note in this. If there be two or more acceptors they can only be liable jointly, not jointly and severally.⁵

Art. 276. A promissory note may contain a pledge of collateral security with authority to sell or dispose thereof.⁶ Note containing pledge of security.

NOTE.—Would the right to the security pass with the instrument? The question has been touched on but not decided.⁷ In France the security follows the instrument, *Nouguier*, § 715. The Belgian Commercial Code, § 26, expressly enacts the same as to bills.

Art. 277. A promissory note may (perhaps) give the holder the option between the payment of the sum specified and the performance of another act by the maker. As to the latter it is not a note.⁸ Note in alternative.

NOTE.—So held in America. The question has not been raised here. See Art. 10. As the payee can demand money, and no option is given to the debtor, it is said there is no uncertainty in the instrument. The promise to pay money is absolute. In New York an instrument running "I promise to pay to C. or order 100 dollars, or in goods on demand," was held to be a valid note.⁹

¹ *Ex parte Buckley* (1845), 14 M. & W. 469.

² *Macra v. Sutherland* (1854), 3 E. & B. 1.

³ *Penkivell v. Connell* (1850), 5 Exch. 381.

⁴ *Gardner v. Walsh* (1855), 5 E. & B. 83; see Art. 248.

⁵ *Jackson v. Hudson* (1810), 2 Camp. 447.

⁶ *Wise v. Charlton* (1836), 4 A. & E. 786; Cf. *Towne v. Rice* (1877), 122 Massachusetts R. 67.

⁷ *Storm v. Stirling* (1854), 3 E. & B. 832.

⁸ Cf. *Dinmore v. Duncan* (1874), 57 New York R. 573; New York Draft Code, 1716.

⁹ *Hostater v. Wilson* (1862), 36 Barb. 307; Cf. Art. 10, Expl. 3.

Note
under
seal.

Art. 278. A promissory note, made by a corporation, may (perhaps) be issued under seal without signature.¹

NOTE.—The question turns on the true construction of 3 & 4 Anne, c. 9, § 1. See, too, the language of 25 & 26 Vict. c. 87, § 47, as to the bills and notes of companies under that Act. It is clear that such an instrument may be negotiable for the purpose of passing with a good title to a *bonâ fide* purchaser for value.² But is it for all purposes a note? Is consideration for its issue and transfer presumed? Can the bearer sue the maker? What is the liability of an indorser and what is the period of limitation? In New York it is held that a promissory note under seal is not negotiable unless issued by government.³ When a note signed by the directors of a company is binding on them personally, the addition of the company's seal is immaterial.⁴

Note
under £20.

Art. 279. A promissory note for less than £20 payable to bearer on demand must be made payable where issued, but may be also payable elsewhere.⁵

Note
under £5.

Art. 280. A promissory note for less than £5 payable to bearer on demand is (it seems) void.

NOTE.—The legislation on the subject is confused, but this seems to be the effect of it. The 48 Geo. 3, c. 88, makes negotiable notes under twenty shillings void. The 17 Geo. 3 c. 30, requires negotiable notes for more than twenty shillings and less than £5 (or on which less than £5 is unpaid), to specify the payee and to conform to other regulations. This Act is suspended by 26 & 27 Vict. c. 105, as to any note "not being a note payable to bearer on demand." The suspension is continued by 39 & 40 Vict. c. 69. The 9 Geo. 4, c. 65, prohibits the issue or negotiation in England of any note for less than £5 payable to bearer on demand which is made or issued or purports to be made or issued "in Scotland or Ireland, or elsewhere out of England." Bank notes for less than £5 have been prohibited in England since 1829 by 7 Geo. 4, c. 6, § 3; for a definition of "bank note," see p. 227.

¹ *Crouch v. Credit Foncier* (1873), 8 L. R. Q. B. at 382, 383.

² *Ex parte Colborne* (1870), 11 L. R. Eq. 478; *Rumball v. Met. Bank* (1877), 2 L. R. Q. B. D. 194.

³ *Merrit v. Cole* (1876), 9 Hun. 98, and *Steele v. Onwego Co.* (1836), 15 Wend. 265.

⁴ *Dutton v. Marsh* (1871), 6 L. R. Q. B. 361.

⁵ 7 Geo. 4, c. 6, § 10.

Transfer.

Art. 281. Promissory notes are by statute negotiable "in the same manner as inland bills of exchange are or may be by the custom of merchants."¹ Statutory negotiability.

NOTE.—This statute, it seems, is merely declaratory,² therefore, the provisions of Chapter III. apply in their entirety to notes.

Art. 282. It is uncertain when a promissory note, payable on demand and not known to have been dishonoured, is to be deemed overdue for the purpose of affecting the holder with equities of which he had no notice when he took it.³ Cf. Art. 285. Note on demand when overdue.

ILLUSTRATION.

A note payable on demand with interest to C. or order is indorsed by C. to D. ten years after its date. D. has not taken an overdue note. He holds it free from equities between the maker and C.⁴

NOTE.—In America it is well settled that a note on demand is deemed overdue after the lapse of a reasonable time from its date, regard being had to its nature as a continuing security, *e.g.*, a note indorsed eight months after date was held to have been indorsed when overdue, it being proved that all parties resided in the same place.⁵ See further Arts. 133, 134, 138, 259.

Duties of Holder.

Art. 283. Presentment for payment is unnecessary to charge the maker of a promissory note, unless by the terms of the instrument presentment is required.⁶ Presentment to charge maker.
Cf. Art. 172.

¹ 3 & 4 Anne, c. 9, § 1.

² *Goodwin v. Roberts* (1875), 10 L. R. Ex. at 350.

³ Cf. *Cripps v. Davis* (1843), 12 M. & W. at 165, Parke, B.

⁴ *Brooks v. Mitchell* (1841), 9 M. & W. 15.

⁵ *Herrick v. Woolverton* (1870), 41 New York R. 581.

⁶ *Walton v. Mascoll* (1844), 13 M. & W. at 455 and 458, Parke, B.

Present-
ment to
charge
maker.

ILLUSTRATIONS.

1. B. makes a note payable to C. or order on demand. The holder can sue B. without proving any presentment or demand.¹

2. B. makes a note running "On demand I promise to pay C. or order at sight." This note must be presented for payment before the holder can sue B.²

Explanation.—When a promissory note is in the body of it made payable at a particular place, presentment at that place is necessary to charge the maker,³ but when a place of payment is indicated at the foot of the note, and by way of memorandum only, no presentment is necessary to charge the maker.⁴

ILLUSTRATION.

B. makes a note payable to his own order and signs it; below his signature are the words "Payable at X. & Co.'s, Bankers, London." B. indorses the note in blank. The holder can sue B. without proving presentment.⁵

Present-
ment to
charge
indorser.

Art. 284. Presentment for payment is necessary in order to charge the indorser of a promissory note.⁶

Explanation.—When a note is in the body of it made payable at a particular place presentment at that place is necessary in order to charge the indorser,⁷ but when a place of payment is merely indicated at the foot of the note and by way of memorandum, presentment at that place is sufficient

¹ *Norton v. Ellam* (1837), 2 M. & W. at 464; Cf. *Dodd v. Gill* (1862), 3 F. & F. 261.

² *Dixon v. Nuttall* (1834), 1 Cr. M. & R. 307. As to the words "at sight" alone, cf. Art. 18.

³ *Bowes v. Howe* (1813), 5 Taunt. 30, Ex. Ch.; *Tregothick v. Edwin* (1816), 1 Stark. 468, printed memorandum; *Spindler v. Grellet* (1847), 1 Exch. 384, non-negotiable note; *Sands v. Clarke* (1849), 8 C. B. 751; *Vander Donck v. Thellusson* (1849), 8 C. B. 812.

⁴ *Price v. Mitchell* (1815), 4 Camp. 200; *Exon v. Russell* (1816), 4 M. & S. 507; *Williams v. Waring* (1829), 10 B. & C. 2.

⁵ *Masters v. Baretto* (1849), 8 C. B. 438.

⁶ Art. 160; Cf. *Gibb v. Mather* (1832), 2 Cr. & J. at 262, 263, Ex. Ch.

⁷ *Roche v. Campbell* (1812), 3 Camp. 247; Cf. Art. 166.

to charge the indorser,¹ but (perhaps) a presentment to the maker elsewhere also suffices.²

Presentment to charge indorser.
Note on demand.

Art. 285. A promissory note payable on demand must (probably) be presented for payment within a reasonable time in order to charge the indorsers.³

Explanation.—Reasonable time is a mixed question of law and fact.⁴ In determining what is a reasonable time regard must be had to the nature of the instrument as a continuing security.⁵

ILLUSTRATION.

A note payable on demand is indorsed by C. to D. Ten months afterwards it is presented for payment and dishonoured. This may be a reasonable time.⁶

Liabilities of Maker.

Art. 286. The maker of a promissory note is the principal debtor on the instrument.⁷ He engages that he will pay it at maturity according to its tenour.⁸

Maker's contract.

NOTE.—The maker is sometimes called the drawer, but the primary and absolute liability of the maker of a note must be distinguished from the secondary and conditional liability of the drawer of a bill of exchange.⁹ In general the maker of a note corresponds with the acceptor of a bill of exchange, and the same rules apply to both. A note indorsed by the payee resembles an accepted bill payable to drawer's order and indorsed by the drawer, the payee corresponding with the drawer.¹⁰ The distinctions that exist between maker and acceptor arise from this. The acceptor is

¹ *Saunderson v. Judge* (1795), 2 H. Bl. 510; Cf. Art. 166.

² *Id.*; and Cf. *Masters v. Baretto* (1849), 8 C. B. 433.

³ *Chartered Bank v. Dickson* (1871), 3 L. R. P. C. 574, see at 579.

⁴ *Id.* at 584; Cf. Arts. 150 and 195.

⁵ *Id.* at 579—580; Cf. *Serrel v. Derbyshire Ry. Co.* (1850), 9 C. B. at 829.

⁶ *Chartered Bank v. Dickson*, *supra*.

⁷ Cf. *Chartered Bank v. Dickson* (1871), 3 L. R. P. C. at 580, and Art. 272.

⁸ *Story on Notes*, § 118; *Walton v. Mascal* (1844), 13 M. & W. at 458.

⁹ *Gwinnd v. Herbert* (1836), 6 N. & M. 723.

¹⁰ *Heylyn v. Adamson* (1758), 2 Burr. at 678, Ld. Mansfield.

Maker's contract. not the creator of a bill, his contract is supplementary, while the maker of a note originates the instrument. Hence (a) a note cannot be made conditionally,¹ while a bill may be accepted conditionally (Art. 39); (b) the statute 1 & 2 Geo. 4, c. 78, § relating to bills accepted payable at a particular place, has no application to notes, which are therefore on the same footing as bills previous to that Act;² (c) maker and payee are immediate parties in direct relation with each other, while acceptor and payee, except in the case of a bill payable to drawer's order, are remote parties. See also the notes to Arts. 10, 20, 37.

Maker's estoppels. Art. 287. The maker of a note payable to order by the fact of making it conclusively admits and warrants to a *bonâ fide* holder the existence of the payee and his *then* capacity to indorse.⁴

¹ Art. 271 and 10.

² Cf. *Gibb v. Mather* (1832), 2 Cr. & J. at 262, 263; *Emblin v. Dartn* (1844), 12 M. & W. 840.

³ Cf. *Bishop v. Young* (1800), 2 B. & P. at 83, Ld. Eldon.

⁴ *Drayton v. Dale* (1823), 2 B. & C. 293; *Lane v. Kreckle* (1869), 22 Iov R. 399; Cf. Arts. 139, 212, 216.

APPENDIX.

STAMP ACT, 1870. (33 & 34 VICT. c. 97.)

Sec. 45.—The term “banker” means and includes any corporation, society, partnership, and persons, and every individual person carrying on the business of banking in the United Kingdom. Banker defined.

The term “bank note” means and includes (1) any bill of exchange or promissory note issued by any banker other than the Bank of England for the payment of money not exceeding £100 to the bearer on demand; (2) any bill of exchange or promissory note, so issued which entitles or is intended to entitle the bearer or holder thereof, without indorsement, or without any further or other indorsement than may be thereon at the time of the issuing thereof, to the payment of money not exceeding £100 on demand, whether the same be so expressed or not, and in whatever form, and by whomsoever such bill or note is drawn or made. Bank note defined.

Sec. 46.—A bank note issued duly stamped, or issued unstamped, by a banker duly licensed or otherwise authorised to issue unstamped bank notes, may be from time to time re-issued, without being liable to any stamp duty by reason of such re-issuing. Re-issue of bank notes.

Sec. 47.—If any banker, not being duly licensed or otherwise authorised to issue unstamped bank notes, issues or causes or permits to be issued any bank note, not being duly stamped, he shall forfeit the sum of £50. Penalty where bank note is unstamped.

If any person receives or takes any such bank note in payment

or as a security, knowing the same to have been issued unstamped contrary to law, he shall forfeit the sum of £20.

Bill of
exchange
defined.

Sec. 48.—The term “bill of exchange” for the purposes of this Act includes also draft, order, *cheque*, and letter of credit, and any document or writing except a bank note (*sec. 45*) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money therein mentioned.

An order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available,¹ or upon any condition or contingency which may or may not be performed or happen, is to be deemed for the purposes of this Act a bill of exchange for the payment of money *on demand*.

An order for the payment of any sum of money weekly, monthly, or at any other stated periods, and also any order for the payment by any person at any time *after* the date thereof of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person on his behalf, is to be deemed for the purposes of this Act a bill of exchange for the payment of money *on demand*.

Note.—A reference to Art. 10 shows that many documents require to be stamped as bills of exchange which have none of the other incidents of bills and which are clearly not negotiable instruments. As to bills on demand, see secs. 50, 54.

Promis-
sory note
defined.

Sec. 49.—(1) The term “promissory note” means and includes any document or writing (except a bank note, *sec. 45*) containing a promise to pay any sum of money.

(2). A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, is to be deemed for the purposes of this Act a promissory note for the said sum of money.

¹ Cf. *Ex parte Shellard* (1878), 17 L. R. Eq. 109.

Note.—A reference to Arts. 10, 19, shews that many instruments require to be stamped as promissory notes which have none of the other incidents of promissory notes.

Sec. 23.—Except when express provision is made to the contrary, When all duties are to be denoted by impressed stamps only (Cf. sec. 53). adhesive or im-

Sec. 24.—(1). An instrument, the duty upon which is required stamp or permitted by law to be denoted by an adhesive stamp, is not to to be used. be deemed *duly stamped*¹ with an adhesive stamp unless (a) the Cancell- person required by law to cancel such adhesive stamp cancels the ation of same by writing on or across the stamp his name or initials, or the adhesive name or initials of his firm, together with the true date of his so stamp. writing, so that the stamp may be effectually cancelled, and rendered incapable of being used for any other instrument, *or unless (b) it is otherwise proved* that the stamp appearing on the instrument was affixed thereto at the proper time.

(2). Every person who, being required by law to cancel an adhesive stamp, wilfully neglects or refuses duly and effectually to do so in manner aforesaid shall forfeit the sum of £10.

Note.—The provisoes to sec. 51 must be read in with this section. It has been ruled that cancellation made with a stamp or die is sufficient, and it seems that the cancellation may be made at any time before verdict, provided it can be made by the proper person.²

Sec. 10.—All the facts and circumstances affecting the liability Facts of any instrument to *ad valorem* duty, or the amount of the *ad* affecting *valorem* duty with which any instrument is chargeable, are to be fully duty to be and truly set forth in the instrument, and every person who with truly set forth. intent to defraud her Majesty—

(1). Executes any instrument in which all the said facts and circumstances are not fully and truly set forth ;

(2). Being employed in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all the said facts and circumstances, shall forfeit the sum of £10.

Note.—A post dated cheque is valid,³ but it is conceived that the person who issues it incurs a penalty under this section.

¹ Cf. *Marc v. Rouy* (1874), 31 L. T. N. S. 872.

² *Vinle v. Michael* (1874), 30 L. T. N. S. 463.

³ *Gatty v. Fry* (1877), 2 L. R. Ex. D. 265; see, too, *Misa v. Currie* (1876), 1 L. R. Ap. Ca. 554, H. L.

Sum payable expressed in foreign currency. *Sec. 11.*—When an instrument is chargeable with *ad valorem* duty in respect of any money in any foreign or colonial currency such duty shall be calculated on the value of such money in British currency according to the current rate of exchange on the day of the date of the instrument.

Cheque or other bill on demand how stamped. *Sec. 50.*—The fixed duty of 1*d.* on a bill of exchange for the payment of money on demand *may* be denoted by an adhesive stamp, which is to be cancelled by the person by whom the bill is signed before he delivers it out of his hands, custody, or power.

Note.—The proviso to sec. 54, enabling the person to whom a bill on demand is presented for payment to stamp it, must be read in with the present section. As regards foreign bills payable on demand the practice is for the holder to stamp them before negotiation in England; but it is difficult to see under what provision of the Stamp Act this is sanctioned. Secs. 50 and 54 seem framed with exclusive reference to inland bills, and sec. 51 does not apply to bills of exchange payable on demand.

Foreign note and foreign bill not payable on demand how stamped. *Sec. 51.*—The *ad valorem* duties upon bills of exchange and promissory notes drawn or made out of the United Kingdom *are* to be denoted by adhesive stamps.

Every person into whose hands any such bill or note comes in the United Kingdom before it is stamped shall, before he presents for payment or indorses, transfers, or in any manner negotiates,¹ or pays such bill or note, affix thereto a proper adhesive stamp, or proper adhesive stamps of sufficient amount and cancel (*Cf. sec. 24*) every stamp so affixed thereto.

Provided as follows :

(1). If at the time when any such bill or note comes into the hands of any *bonâ fide* holder thereof there is affixed thereto an adhesive stamp effectually obliterated and purporting and appearing to be duly cancelled, such stamp shall, so far as relates to such holder, be deemed to be duly cancelled, although it may not appear to have been so affixed or cancelled by the proper person.

(2). If at the time when any such bill or note comes into the hands of any *bonâ fide* holder thereof there is affixed thereto an adhesive stamp not duly cancelled (*Cf. sec. 24*) it shall be competent for such holder to cancel such stamp as if he were the person by whom it was

¹ *Cf. Griffin v. Weatherby* (1868), 3 L. R. Q. B. at 760.

affixed, and upon his so doing such bill or note shall be deemed duly stamped, and as valid and available as if the stamp had been duly cancelled by the person by whom it was affixed. (Cf. sec. 24 and note.)

But neither of the foregoing provisos is to relieve any person from any penalties incurred by him for not cancelling any adhesive stamp. (Cf. sec. 24.)

Note.—The result of the Act is this: 1. Bills of exchange payable on demand, whether inland or foreign, may be stamped with either impressed or adhesive stamps, though of course a foreign bill would not be likely to be on an impressed stamp (secs. 23 and 50). 2. Foreign notes of all kinds and foreign bills of exchange payable otherwise than on demand must be stamped with adhesive stamps (sec. 51). 3. Inland notes of all kinds and inland bills payable otherwise than on demand must be on impressed stamps (sec. 23).

Foreign Stamp Laws.—When a bill, issued abroad, is absolutely void (not merely inadmissible in evidence) where issued, because it is not stamped according to the law of the place of issue, it is perhaps void here,¹ but apart from this our courts do not regard the revenue laws of other countries; and this seems right, as the present Stamp Act requires bills issued abroad to be stamped here, and makes no allowance for the foreign stamp.

Sec. 52.—A bill of exchange or promissory note purporting to be drawn or made out of the United Kingdom is for the purposes of this Act to be deemed to have been so drawn or made, although it may in fact have been drawn or made within the United Kingdom.

Sec. 53.—When a bill of exchange or promissory note has been written on material bearing an impressed stamp of sufficient amount but improper denomination, it may be stamped with the proper stamp on payment of the duty and a penalty of 40s., if the bill or note be not then payable according to its tenour, and of £10 if the same be so payable. Except as aforesaid, no bill of exchange or promissory note shall be stamped with an *impressed* stamp after the execution thereof.

Sec. 54.—Every person who issues,² indorses, transfers, negotiates,³

¹ *Clegg v. Levy* (1812), 3 Camp. 166; *Bristow v. Sequeville* (1850), 5 Exch. at 279; *Westlake*, § 176; Cf. *Arts.* 59, 60; *contra*, *Byles*, 12th ed., p. 403.

² Cf. *Art.* 246, issue defined.

³ Cf. *Griffin v. Weatherby* (1868), 3 L. R. Q. B. at 760.

not being
duly
stamped. presents for payment, or pays any bill of exchange or promissory note liable to duty and not being duly stamped shall forfeit the sum of £10, and the person who takes or receives from any other person any such bill or note not being duly stamped,¹ either in payment or as a security, or by purchase or otherwise, shall not be entitled to recover thereon or to make the same available for any purpose whatever.

Provided that if any bill of exchange for the payment of money on demand, liable only to the duty of 1*d.*, is presented for payment unstamped, the person to whom it is so presented may affix thereto a proper adhesive stamp, and cancel the same as if he had been the drawer of the bill, and may upon so doing pay the sum in the said bill mentioned and charge the duty in account against the person by whom the bill was drawn, or deduct such duty from the said sum, and such bill is so far as respects the duty to be deemed good and valid. But the foregoing proviso is not to relieve any person from any penalty he may have incurred in relation to such bill.

Bill in a
set how
stamped.

Sec. 55.—When a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated² apart from such duly stamped bill, be exempt from duty, and upon proof of the loss or destruction of a duly stamped bill forming one of a set, any other bill of the set which has not been issued or in any manner negotiated apart from such lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of such lost or destroyed bill.

Amount of Duty as per Schedule.

		£	s.	d.
Amount of duty.	Bill of exchange payable on demand	0	0	1
	Bill of exchange of any other kind whatsoever, and promissory note of any kind whatsoever drawn or expressed to be payable, or actually paid or indorsed, or in any manner negotiated in the United Kingdom where the amount or value (Cf. sec. 11) of			

¹ Cf. *Marc v. Rouy* (1874), 31 L. T. N. S. 372.

² Cf. *Griffin v. Weatherby* 1868, 3 L. R. Q. B. at 760.

	£	s.	d.
the money for which the bill or note is drawn or made does not exceed £5	0	0	1
Exceeds £5 and does not exceed £10	0	0	2
„ 10 „ 25	0	0	3
„ 25 „ 50	0	0	6
„ 50 „ 75	0	0	9
„ 75 „ 100	0	1	0
For every £100, and also for any fractional part of £100 of such amount or value	0	1	0

Note.—The fact that a bill is payable with interest does not affect the stamp,¹ e.g., a note for £50 payable with interest at 5 per cent. requires only a 6*d.* stamp.

Bill payable with interest.

Exemptions.

- (1). Bill or note issued by the Bank of England or Bank of Ireland.
- (2). Draft or order drawn by any banker in the United Kingdom upon any other banker in the United Kingdom, not payable to bearer or order, and used solely for the purpose of settling or clearing any account between such bankers.
- (3). Letter written by a banker in the United Kingdom to any other banker in the United Kingdom directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made, or to any person on his behalf.
- (4). Letter of credit granted in the United Kingdom authorising drafts to be drawn out of the United Kingdom payable in the United Kingdom.
- (5). Draft or order drawn by the accountant-general of the Court of Chancery.
- (6). Warrant or order for the payment of any annuity granted by the Commissioners for the Reduction of the National Debt, or for the payment of any dividend or interest on any share in the government or parliamentary stocks or funds.
- (7). Bill drawn by the lords of the Admiralty, or by any person

¹ *Pruessing v. Ing* (1821), 4 B. & Ald. 204.

under their authority upon and payable by the accountant-general of the navy (Cf. 35 & 36 Vict. c. 20, s. 7).

- (8). Bill drawn upon and payable out of any public account for any pay or allowance of the army or other expenditure connected therewith.
- (9). Coupon, or warrant for interest, attached to and issued with any security.
- (10). Acknowledgment by a banker of the receipt of any bill of exchange or promissory note for the purpose of being presented for acceptance or payment. (See tit. *Receipt*.)
- (11). Receipt written upon a bill of exchange or promissory note duly stamped.

Protest and other Notarial Acts.

Protest,
&c., how
stamped.

Sec. 116.—The duty upon a notarial act and upon the protest by a notary public of a bill of exchange or promissory note may be denoted by an adhesive stamp, which is to be cancelled by the notary.

Amount.

Where the duty on a bill or note does not exceed 1s., the duty on the protest is the same as on the bill or note. In any other case the duty is 1s., and the duty on any notarial act other than a protest is 1s. *See Sched.*

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